Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Joanne Elkins, Hattie Lanfair,	)	
Rachelle Lee	)	
Complainants,	)	Proceeding Number _____
	)	File No. EB-_____ -
v.	)	
	)	
AT&T Corp.	)	
Defendant.	)	

FORMAL COMPLAINT OF JOANNE ELKINS, HATTIE LANFAIR AND RACHELLE LEE

Daryl Parks
Parks & Crump
240 North Magnolia, Drive
Tallahassee, Florida, 32301

(850) 222-3333
(850) 224-6679 (fax)

Counsel for Joanne Elkins, Hattie Lanfair and Rachelle Lee

Dated: August 24, 2017

Federal Communications Commission
Washington, D.C. 20554

SECTION 208 FORMAL COMPLAINT INTAKE FORM

1. Case Name: Joanne Elkins, Hattie Lanfair, Rachelle Lee v. AT&T Corp
2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable):Joanne Elkins, 1423 East 85th St, Cleveland, Ohio, 44106; Hattie Lanfair, 12721 Iroquois Ave, Cleveland, Ohio and Rochelle Lee, 2270 73rd St, Cleveland, Ohio 44103
3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable): AT&T 208 S. Akard Street, Dallas, Texas 75202.
4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: Sections 201, 202, 206 and 208 of the Communications Act, Section 706 of the 1996 Telecommunications Act, and Sections 1.720 et seq. of the

Answer (Y)es, (N)o or N/A to the following:

Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.

Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.

Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:

Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.

Y b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.

Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).

Y d. Complaint contains a certification that complies with 47 C.F.R Section 1.72l(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.

N/A e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:

_____

_____ f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:

_____

Y g.Complaint includes an information designation that contains:

_____ (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and

_____ (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and

_____ (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations. and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.

Y i. Certificate of service is attached and conforms to the specifications prescribed by 47 C.F.R. Sections 1.47(g) and 1.735(f).

j. Verification of payment of filing fee in accordance with 47 C.F.R. Sections 1.721(13) and 1.1106 is attached.

Y 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.

Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).

Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47(e) and 47 C.F.R. Section 1.735(d).

Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).

Y 12. The correct number of copies required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.

Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).

Y 14. If Complaint is by multiple complainants, it complies with the requirements of 47 C.F.R. Section 1.723(a).

Y 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).

Y 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).

Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.

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James J. Halpert & Angela J. Campbell, Electronic Redlining: Discrimination on the Information Superhighway, cited in New Challenges: The Civil Rights Record of the Clinton Administration Mid-Term, 278-279 (Corrine M. Yu & William L. Taylor eds., 1995).

Reply Comments of AT&T Inc., Broadband Industry Practices, WC Docket No. 07-52 (filed July 16, 2007), available at https://ecfsapi.fcc.gov/file/6519558101.pdf (last visited Aug 7, 2017)

Letter to Chairman Wheeler and Commissioners Clyburn, O'Reilly, Pai and Rosenworchel by Access Humboldt, American Library Association, AT&T, et al., WC Docket No. 11-42, (March 1, 2016). Lifeline and Link Up Reform and Modernization

"FCC to create advisory panel on diversity", April 27, 2017, by Harper Neidig, The Hill (HTTP://THEHILL.COM/POLICY/TECHNOLOGY/330226-FCC-TO-CREATE-ADVISORY-PANEL-ON-DIVERSITY) last visited Aug 6, 2017

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FORMAL COMPLAINT OF JOANNE ELKINS, HATTIE LANFAIR AND RACHELLE LEE

1. Pursuant to Sections 201, 202 and 208 of the Communications Act, Section 706 of the 1996 Telecommunications Act, and Sections 1.720 et seq. of the Commission's rules, Complainants Joanne Elkins, Hattie Lanfair, and Rochelle Lee bring this formal complaint against AT&T Corporation alleging: 1) unjust and unreasonable discrimination in the provision of broadband internet access service; 2) misrepresentation of its intent to serve all residents in Cleveland, Ohio. 47 U.S.C. §§ 201, 202, 208, 1302; 47 C.F.R. §1.720 *et seq.* Complainant further requests the Commission to initiate an investigation pursuant to Section 403. 47 U.S.C. §403.

SUMMARY

2. This complaint, brought by Joanne Elkins, Hattie Lanfair,and Rachelle Lee, three African-American, low-income residents of Cleveland, OH alleges that AT&T's offerings of

high speed broadband service violates the Communications Act's prohibition against unjust and unreasonable discrimination.

3. The complaint alleges specific harms inflicted on the complainants.

4. The complaint, relying on a study conducted by the National Digital Inclusion Alliance and Connect Your Community, titled, *AT&T's Digital Redlining*, demonstrates that the failure to provide high speed broadband services to them is part of a pattern by AT&T across Cleveland and across the United States.

5. The study offers clear evidence that AT&T has withheld fiber-enhanced its "Fiber To the Node" VDSL infrastructure ("FTTN")– which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets—from most of the overwhelming majority of census blocks with individual poverty rates above 35%. These high poverty blocks include Cleveland neighborhoods such as Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and other low-income communities.

6. Such low-income neighborhoods have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than what AT&T provides to middle-income city neighborhoods as well as most suburbs. As a result, their residents are left with severely limited and uneven Internet access; no access to AT&T's competitive fiber-enabled video service.

7. As such, complainants request that the Commission: (a) find that Defendant AT&T has violated Section 202, 254 and 706 of the Act, 47 U.S.C. § 202, 254, 1302, by failing to serve the low-income, communities of color in Cleveland, Ohio, and consequently, issue preliminary and permanent injunctions prohibiting AT&T from engaging in the discriminatory and anticompetitive conduct and practices alleged herein; and (b) find that AT&T has violated

Sections 202, 254 and 706 of the Act, codified at 47 C.F.R. §1302, 47 U.S.C.§§ 202, 254 and 1302, by failing to deploy broadly, and thereby direct specific performance of AT&T's obligations, including but not limited to an obligation upon AT&T to provide broadband services to the lower income minority communities in Cleveland, Ohio.

8. Complainants request the Commission move immediately to designate process for discovery.

9. Complainants seek a hearing on the amount of damages in a separate proceeding per a supplemental complaint per Commission Rule 1.722. 47 C.F.R. § 1.722. Dam

PARTIES AND COUNSEL

10. Complainants Joanne Elkins, Hattie Lanfair, and Rochelle Lee, three African-American, low-income, residents of Cleveland, Ohio.

11. Complainants are represented by Attorney Daryl D. Parks. Parks & Crump, LLC. 240 N. Magnolia Dr., Tallahassee, Florida.

12. Defendant AT&T is a Texas corporation with its principal place of business in 208 S. Akard Street, Dallas, Texas 75202. AT&T is operating as a common carrier, and specifically as a telecommunications, video programming service and a broadband service, that is subject to the Act.

13. Defendant is represented by Attorney James Meza III, Senior Vice President and Assistant General Counsel, AT&T 2260 East Imperial Highway, El Segundo, CA 90245.

JURISDICTION

14. As detailed in the legal analysis section below, the Commission has jurisdiction pursuant to Sections 201, 202 and 208 of the Communications Act, Section 706 of the 1996

Telecommunications Act, and Sections 1.720 et seq. of the Commission's rules. 47 U.S.C. §§ 201, 202, 208, 1302; 47 C.F.R. §1.720 et seq. AT&T is a common carrier, 47 U.S.C. § 153, subject to Title II of the Act, including Sections 202 and 706.

15. The Commission has authority to initiate an investigation pursuant to Section 403 of the Communications Act. 47 U.S.C. §403.

16. The Commission possesses additional authority pursuant to Sections 151 and 254 of the Communications Act, 47 USC § 151, 254, and the Commission's rules including 47 C.F.R. §§ 1.1, 4(i), 1.17, 1.24, 1.52.

REQUIRED CERTIFICATIONS

17. *Settlement Discussions*. Counsel for complainants and Defendant have engaged in significant discussions in writing and one in-person meeting. Defendant does not acknowledge its obligation to serve Complainants; therefore parties are sufficiently far apart that we seek Commission intervention in this dispute. Pursuant to the Commission's rules (47 C.F.R. § 1.721(a)(8)), Complainant hereby certifies that it has attempted in good faith to discuss the possibility of settlement with AT&T prior to filing this Formal Complaint. See Letter from Daryl D. Parks to AT& (dated April 24, 2017). (see attached)

At various points in time, Complainant and AT&T have discussed settlement but at present, the parties remain far apart. Counsel for AT&T expresses an unwillingness to engage in mediation. AT&T Provided a Letter Reply to Daryl Park's April 24, 2017-dated later (dated Aril 28, 2017) and a second letter (dated May 5, 2017). To which, Daryl Parks replied with his a letter dated May 23, 207 and to which AT&T replied on June 12, 2017. (see attached)

The parties actually met in person during a July 21, 2017 meeting with AT&T attended by Daryl D. Parks, Cheryl Leanza consultant and staff support and Montana Williams, a summer Associate and staff support. AT&T representatives attending this meeting included Robert Quinn, SEVP, External & Legislative Affairs; Len Cali, SVP, Global Public Policy; Claudia Jones, SVP, Public Affairs & Communications; David Lawson, SVP, Assistant General Counsel and Tanya Lombard, AVP, Public Affairs and Communications. The meeting ended with a flat denial by AT&T that it is redlining. Mr. Parks replied to this meeting with a letter to Chairman and CEO Randall Stephenson; Senior Vice President and Secretary Stacey Marris; Senior Vice President and assistant General Counsel James Meza III and Senior Vice President, External and Legislative Affairs, Robert Quinn expressing his disappointment with the tenor of members at the meeting, in light of commitments the company has made in the past to broadly serve.(dated July 24, 2017) see attached.

AT&T did agree to offer to deploy a 5G pilot but that is not sufficient but is basic. The company has noted and has advocated for before, it wants the flexibility and freedom to offer different tiers of service to different customers, and the NDIA report shows it is doing just that. Therefore, Complainant is not satisfied with the concession of expanding the 5G pilot alone.

Pursuant to the Commission's rules regarding separate actions (47 C.F.R. § 1.721(a)(9)), Complainant states that no party has filed any separate actions in any fact finding or decision making body.

18. *Payment of Fee and Registration Number*. Complainants paid the required $230.00 fee on August 22, 2017 and obtained the Commission-required FRN as follows: FRN # 0026738203

FACTS

I. Introduction

19. This complaint brings to the Commission the needs of low-income individuals who require, as most people in the United States do today, reasonable access to affordable broadband services. Digital or electronic redlining is the failure to provide service, or providing inferior service, to a community—typically to a community of color or a low-income community in an urban area.[1] Such discrimination is most likely when communities do not benefit from competition and when they lack political power to advocate for their own rights as consumers.

II. Complainants

20. Complainants Joanne Elkins of 1423 East 85th Street, Cleveland, Ohio, 44106; Hattie Lanfair of 12721 Iroquois Avenue, Cleveland, Ohio and Rochelle Lee of 2270 73rd St, Cleveland, Ohio 44103; are low-income residents in the AT&T Cleveland service area with combined first-hand experience as AT&T customers of over 40 years. They assert that they have an interest to acquire high speed broadband and as customers of AT&T have paid for broadband access but get speeds that are too slow to accommodate the most basic of functionalities on their home, mobile, desktop devices. Ms. Elkins explained having purchased a $1500 security equipment to protect her home and provide her security as a low vision visually impaired individual, only to discover the security system was rendered useless because of the slow

[1] Leonard M. Baynes, *Deregulatory Injustice and Electronic Redlining: The Color of Access to elecommunications*, 56 Admin. L. Rev. 263, 269-270 (2004); James J. Halpert & Angela J. Campbell, *Electronic Redlining: Discrimination on the Information Superhighway*, cited in New Challenges: The Civil Rights Record of the Clinton Administration Mid-Term, 278-279 (Corrine M. Yu & William L. Taylor eds., 1995).

broadband speeds from her AT&T Broadband service, making the home security system ineffectual. Ms. Lanfair has attempted to get an upgrade of her services but as told none is available. Her daughter is a teacher and cannot stay over her home during the school year because she cannot download homework. Ms. Lee complained that her grandchildren that visit her home are unable to stream videos or play games on their devices because of the painfully slow services. It is their belief that they and the residents and children of their community are deprived because they are stuck with horribly slow broadband service while still paying monthly fees for access. To them, AT&T has given them inequity of service, compared to the service they've learned residents in wealthier parts of the city who receive broadband service and bullet speed comparatively.

III. Evidence of AT&T Redlining in Cleveland

21. A recent detailed study, *AT&T's Digital Redlining,* by two non-profit groups with extensive experience in digital inclusion -- Connect Your Communities and National Digital Inclusion Alliance demonstrates that the experience of Complainants Elkins, Lanfair and Lee are not unique or individualized.

22. The study, based on AT&T's own data submitted to the Commission via Form 477 offers clear evidence that AT&T has withheld the standard product offering for most suburbs--fiber-enhanced its "Fiber To the Node" VDSL infrastructure ("FTTN")– from most the overwhelming majority of census blocks with individual poverty rates above 35%. As a consequence, residents of these neighborhoods: suffer uneven, often severely limited Internet access , in many cases 3 mbps downstream or less, and also lack access to AT&T's competitive fiber-enabled video service and the benefits such competition and service would bring.

23. The study analyzes Form 477 data, which lists 13,457 Census blocks in Cuyahoga County served by AT&T with ADSL2, VDSL, or FTTH service. Of the 5,567 blocks located in the city of Cleveland, in only 34% (1,904) is the Maximum Advertised Download Speeds provided by VDSL or FTTH. Of the 7,890 blocks in the rest of the county, the FTTH/VDSL percentage is 61%.

24. Twenty-two percent of Cleveland Census blocks were reported by AT&T to have maximum residential download speeds of 3 Mbps or less. Fifty-five percent had maximum download speeds no greater than 6 Mbps. The comparable percentages for the rest of Cuyahoga County were 12% and 24%, respectively.

25. The analysis shows a clear and troubling pattern: A pattern of long-term, systematic failure to invest in the infrastructure required to provide equitable, mainstream Internet access to residents of the central city (compared to the suburbs) and to lower-income city neighborhoods. Specifically, AT&T has chosen not to extend its "FTTN" VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%.

26. The study's results provide clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates – including Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others.

27. AT&T has chosen not to extend its "FTTN" VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of

blocks with individual poverty rates above 35%. These neighborhoods have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs.

28. As a result, their residents are left with: 1) uneven, often severely limited Internet access – in many cases 3 mbps downstream or less; and 2) no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for "cable franchise reform", i.e. the elimination of municipal cable franchising, in Ohio in 2007.

29. Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, this analysis demonstrates evidence of a policy and practice of "digital redlining" by AT&T.

IV. Redlining is Widespread in the United States and Not Unique to Cleveland

30. Several recent independent studies demonstrate that redlining against low-income communities continues to be a serious problem. Two detailed analyses of Commission data by the prestigious and independent Center for Public Integrity demonstrate that the challenges in Cleveland are not isolated cases. The Center found that, "the largest noncable internet providers collectively offer faster speeds to about 40 percent of the population they serve nationwide in wealthy areas compared with just 22 percent of the population in poor areas."[2] In a nationwide analysis, the Center found "85% of people in places where the majority of households make $80,694 or more can purchase internet access with 10Mbps or faster download speeds from

[2] Allan Holmes and Ben Wieder, Center for Public Integrity, "DSL providers save faster internet for wealthier communities" (Oct. 14, 2016) https://www.publicintegrity.org/2016/10/14/20341/dsl-providers-save-faster-internet-wealthier-communities

AT&T, in areas it serves, whereas 69% of people living in places where the majority of households make less than $34,783" can do the same.[3]

31. While carriers justify these disparities based on ostensibly logical differences, such as the density of a population, which impacts the cost of broadband deployment, the Center found "even controlling for population density, the rural poor are still in excess of one-and-a-half times as likely to lack high-speed broadband as rural wealthy families" and "in urban areas where 94 percent of households have access, low-income families are three times as likely to lack access as the wealthiest urban families."[4]

32. Further, in a report issued this December, a detailed analysis of national broadband adoption data concluded, that many non-white racial and ethnic groups continue to lag behind Whites in home-internet adoption even after accounting for differences in income, age, education, and other factors. The report concluded, "racial discrimination contributes to the digital divide."[5] A study of AT&T's deployment in California drew similar conclusions, high-speed fiber services are deployed disproportionately to the highest-income neighborhoods.[6]

LEGAL ANALYSIS

I. No Unjust or Unreasonable Discrimination or Practices.

[3] Id.

[4] Allan Holmes, et al., Center for Public Integrity, "Rich people have access to high-speed Internet; many poor people still don't," (May 12, 2016) https://www.publicintegrity.org/2016/05/12/19659/rich-people-have-access-high-speed-internet-many-poor-people-still-dont.

[5] S. Derek Turner, Digital Denied (Free Press: December 13, 2016), https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf

[6] Garret Strain et al., Haas Institute, AT&T's Digital Divide in California, Policy Brief 2017, http://haasinstitute.berkeley.edu/sites/default/files/haas_broadband_042417-singles.pdf

33. Federal communications policy is replete with prohibitions and policies against discriminatory deployment and offerings of communications service.[7] The Commission is charged with "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, *to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex*, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service...." 47 U.S.C. § 151 (emphasis added).

34. Section 202 of the Communications Act provides:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or *to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage*.

47 U.S.C. § 202 (emphasis added).

35. Section 201(b) of the Act states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b). The Commission has held that unfair and deceptive marketing practices by interstate common carriers, including misrepresentations about a carrier's service constitute unjust and unreasonable practices under Section 201(b) of the Act.[8]

II. Broadband Access Internet Services Legal Treatment

[7] For example, the 1992 Cable Act requires local franchising authorities to "assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides." 47 U.S.C. § 541(3). See also 47 U.S.C. § 254.

[8] See, e.g, In the Matter of Advantage Telecommunications Corp., File No.: EB-TCD-12-00004803, NAL/Acct. No.: 201332170013, FRN: 0005077730 at paras (rel. April 25, 2017)

36. Broadband Access Internet Services (BIAS), including the DSL services subject to this compliant, are subject to Section 202. *Protecting and Promoting the Open Internet*, GN Docket 14-28, 30 FCC Rcd 5601 at paras. 331, 337 (2015). The Commission has interstate authority over broadband services because the Commission has declared it "broadband Internet access service is jurisdictionally interstate for regulatory purposes." *Open Internet Order*, 30 FCC Rcd at 5803, para. 431. The Commission retained jurisdiction over BIAS in its *Open Internet Order* specifically because it anticipated that enforcement proceedings under Section 208 would be necessary to protect consumers. *Id*. at para 434 (citing the importance of network deployment).

III. Obligations to Deal Honestly with the Commission

37. Parties before the Commission are required to make truthful and accurate statements in its proceedings. 18 U.S.C. § 1001 (criminal perjury before federal agencies); 47 C.F.R. § 1.17 (investigatory or adjudicatory matters); 47 C.F.R. § 1.24 (ethical conduct of counsel); 47 C.F.R. § 1.52 (requiring filings to be signed and with good grounds).

IV. Standard for Determining Discrimination Under Section 202

38. Under Section 202, "[c]ourts have fashioned a three-step analysis to determine whether a carrier has violated this section. The first inquiry is whether the services are 'like'; if they are, the next inquiry is whether there is a price difference between them; and if so, the third inquiry is whether the difference is reasonable." *Nat'l Communications Ass'n, Inc. v. AT&T Corp*., 238 F.3d 124, 127 (2d Cir. 2001). The burden is on the complainant to establish the first two elements. If the complainant makes this showing, the burden shifts to the carrier to justify the price disparity as reasonable. *Nat'l Communications Ass'n*, 238 F.3d at 129-133.

39. It is clear that service quality and price are inextricably linked – unjust offerings under Section 202 can be successfully brought if either the price or the product unjustly or unreasonably discriminates. *AT&T v. Central Office Tel.*, 524 US 214, 234 118 S Ct 1956 (1998). Moreover, refusing to offer a service to one customer that is offered to another customer is also a violation of Section 202. *See, e.g., In re American Trucking Asso., Inc.* 41 FCC2d 2 (1973).

40. Under the three-part test, the Commission follows a "functional equivalency" test to determine which products are "like," which the Commission describes as follows:

> This test looks to whether there are any material functional differences between the services. An important aspect of the test, as it has evolved, involves reliance upon customer perception to help determine whether the services being compared provide the same or equivalent functions. The test asks whether the services at issue are 'different in any material respect' and requires the Commission to examine both the nature of the services and the customer perception of the functional equivalency of the services. The test presumes that not all differences between the services make them a priori unlike. Rather, the differences must be functionally material or, put another way, of practical significance to customers.

In the Matter of Cellexis International, 16 FCC Rcd 22887, 22892 (2001).

41. The Commission has affirmed that services subject not to tariffing, but only to the nondiscrimination obligations of Section 202, must not refuse to serve people because of their race or income. In a case dealing with mobile CMRS carriers, which were not subject to specific tariffing obligations but were subject to Section 202 nondiscrimination obligations, the Commission stated clearly, and was affirmed by the D.C. Circuit, that a provider may not "refuse 'to deal with any segment of the public whose business is the 'type normally accepted.' … [And] [t]hey cannot decline "to serve any particular demographic group (e.g. customers who are of a certain race or income bracket)." *Orloff v. FCC*, 352 F.3d 415, 420 (DC Cir. 2003) (citing *Orloff v. Vodafone*, 17 FCC Rcd 8987 at 8997 (2002)). The Commission specifically noted the danger

of discrimination in a less-than-competitive market such as the one in this complaint. "If a CMRS market were inadequately competitive, or if some other market failure limited consumers' abilities to use market forces to protect themselves, Section 202 could be implicated." *Id*. at 8997-8998. In a similar proceeding, the Commission found, "Assuming all relevant product and geographic markets become substantially competitive, … carriers may still be able to treat some customers in an unjust, unreasonable, or discriminatory manner. Competitive markets increase the number of service options available to consumers, but they do not necessarily protect all consumers from all unfair practices. The market may fail to deter providers from unreasonably denying service to, or discriminating against, customers whom they may view as less desirable." *PCIA Forbearance Order*, 13 FCC Rcd at 16868, para. 23 (1998).

V. Complainants Demonstrate an Unreasonable Difference in Service

42. The instant complaint meets the complainants' burden under the three-part test. In the case of the complainants here, AT&T offers a product that is inferior to consumers living directly adjacent to consumers that receive a high-quality service. Consumers view ADSL and VDSL2 as services which meet the same needs. Both are broadband services used to reach the Internet, stream video, and other similar needs. One product is of much lower quality than another. The only meaningful difference between these consumers is their residence in an area in the urban core of Cleveland, consisting of significantly more low-income families and people of color.

43. The difference in price between the services offered by AT&T is not relevant here because the complainants do not seek lower quality services at lower prices, they seek a higher quality service. While complainants are paying significant, potentially unjust sums, for low-

quality service, the core concern here is the complainants inability to obtain speeds and quality sufficient to meet their needs.

44. The loss of competition harms the complainants, because deployment of fiber based technology has a "positive effect on broadband competition." *In the Matter of Applications of AT&T and DirecTV*, 30 FCC Rcd. 9131, para. 345 & n.1040 (2015) (study showed "cable market share declines by approximately 40 percent when facing competition from FTTP instead of DSL.") The loss of competition to some consumers means those consumers do not benefit from lower prices and higher quality.

45. AT&T has been found to violate section 202 before, and is not immune from section 202 merely because its discrimination is based on investment decisions. In *Nat'l Communications Ass'n, Inc. v. AT&T Corp.*, the Second Circuit affirmed a 202 violation, in part, because AT&T had given far fewer resources to a department that serviced one set of customers than the department that served AT&T's own customers. *Nat'l Communications Ass'n, Inc. v. AT&T Corp.*, 238 F.3d 124, 126 (2d Cir. 2001).

VI. The Commission Must Act Regardless of BIAS Title II Classification

46. The Commission has recently questioned whether broadband services should be subject to Title II of the Act. *Restoring Internet Freedom*, Notice of Proposed Rulemaking, Docket 17-108 (rel. May 23, 2017). While this complaint is ample evidence for the reasons why the Commission should retain its Title II over broadband, nonetheless the Commission possess authority no matter its future decision in that proceeding.

47. Moreover, even if the Commission were to revise its regulatory treatment of broadband service, this complaint should not be dismissed based on a future regulatory decision.

48. National policy supports "deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" and "access to advanced telecommunications and information services … in all regions of the Nation." 47 U.S.C. § 1302(a), 254(b)(2).

49. Section 706(a) of the 1996 Telecommunications Act directs the Commission to utilize its arsenal of tools to promote broadband deployment, including, "measures that promote competition in the local telecommunications market." 47 U.S.C. § 1302(a).

50. The Commission is directed in Section 706 to "take immediate action to accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." 47 U.S.C. § 1302(b).

51. The Commission has authority here because the courts have affirmed the Commission's conclusion that Section 706 contains an operative grant of authority. *Verizon v. FCC*, 740 F.3d 623, slip. Op 20-22 (D.C. Cir. 2014); *see also United States Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).[9]

52. The Commission is authorized under Section 706 because complainants do not seek in this case sweeping common carrier regulation, but rather a finding that advanced telecommunications capabilities have not been deployed to low income neighborhoods in Cleveland, OH in contravention of Section 706.

53. Section 706 is therefore directly applicable to the deployment of advanced services to all Americans, and thus grants direct authority for the Commission to act.

VII. The Commission Should Initiate an Investigation Pursuant to Section 403.

[9] *Comcast v. FCC*, 600 F.3d 642 (D.C. Cir. 2010), is not relevant here because the Commission has now revisited its previous position which concluded that Section 706 was not a grant of authority.

54. Under Section 403, the Commission has sweeping authority to "institute an inquiry" pursuant to an authorized complaint relating to the enforcement of Commission rules. 47 U.S.C. § 403.

RELIEF REQUESTED

55. Complainants request that the Commission: (a) find that Defendant AT&T has violated Section 202, 254 and 706 of the Act, 47 U.S.C. § 202, 254, 1302, by failing to serve the low-income, communities of color in Cleveland, Ohio, and as such, issue preliminary and permanent injunctions prohibiting AT&T from engaging in the discriminatory and anticompetitive conduct and practices alleged herein, and (b) find that AT&T has violated Sections 202, 254 and 706 of the Act, codified at 47 C.F.R. §1302, 47 U.S.C.§§ 202, 254 and 1302, by failing to deploy broadly, and thereby direct specific performance of AT&T's obligations, including but not limited to AT&T's obligation to provide broadband services to the lower income minority communities in Cleveland, Ohio.

56. Complainants seek a hearing on the amount of damages in a separate proceeding per a supplemental complaint per Commission Rule 1.722. 47 C.F.R. § 1.722.

57. If the Commission is unwilling at this time to proceed through an adjudication, it should refer the matter to the ALJ for a public hearing under 47 U.S.C. §403.

58. Complainants request all other such relief as may be just and proper.

CONCLUSION

For the reasons set forth above and in the Formal Complaint, the Commission should grant Complainants the relief they have requested.

Daryl Parks
Parks & Crump
240 North Magnolia, Drive
Tallahassee, Florida, 32301

(850) 222-3333
(850) 224-6679 (fax)

Counsel for Joanne Elkins, Hattie Lanfair and Rachelle Lee

Dated: August 23, 2017

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Joanne Elkins, Hattie Lanfair,	)	
Rachelle Lee	)	
Complainants,	)	Proceeding Number _____
	)	File No. EB-_____ -
v.	)	
	)	
AT&T Corp.	)	
Defendant.	)	
	)	

INFORMATION DESIGNATION

Joanne Elkins, Hattie Lanfair, and Rochelle Lee, hereby submit this information designation in accordance with Sections 1.721(a)(10)(i), (ii), (iii), and 1.721(a)(11) of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. §§ 1.721(a)(10)(i), (ii), (iii) and 1.721(a)(11), and 1.724(f)(2), and 1.726(d)(2).

Individuals Believed to Have First-Hand Knowledge, Rule 1.721(a)(10)(i)

Pursuant to Section 1.721(a)(10)(i) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(i), set forth below are the names, addresses, and positions of the individuals who have first-hand knowledge of facts alleged with particularity in this Formal Complaint, and a description of the facts within any such individual's knowledge.

Joanne Elkins of 1423 East 85th Street, Cleveland, Ohio, 44106; Hattie Lanfair of 12721 Iroquois Avenue, Cleveland, Ohio and Rochelle Lee of 2270 73rd St, Cleveland, Ohio 44103;

are residents in the AT&T Cleveland service area with combined first-hand experience as AT&T customers of over 40 years.

For example, Elkins has less than 2mg speed and as a result, can attest to not being able to download anything and having attempts to download and upload drop and stall out due to the slow speed. Lanfair contacted attorney Daryl Parks after complaining directly to AT&T over a year and seeing the NDIA report in the news. She has known him personally for over 20 years. Her son and Mr. Parks attended Florida A&M together and therefore is confident he could get results after her attempts to get them from AT&T failed. Ms. Lee's home has less than 8 mg speed and she can attest to the extreme slow lag in service.

Documents, Data Compilations, and Tangible Things, Rule 1.721(a)(10)(ii)

Pursuant to Section 1.721(a)(ii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(ii), and the Commission's May 18, 2017 order granting AT&T's request for a waiver in connection with that provision, AT&T states that, in lieu of the requirements of stated in Rule 1.721(a)(1)(ii), AT&T is relying on the Exhibits submitted with its Formal Complaint. See Documents Relied Upon pursuant to Rule 1.721(a)(11), infra.

Identification of Persons and Documents, Rule 1.721(a)(10)(iii)

Pursuant to Section 1.721(a)(10)(iii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(iii), Joanne Elkins, Hattie Lanfair and Rochelle Lee provides that this information designation was prepared by their counsel Daryl Parks of Parks and Crump,

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Joanne Elkins, Hattie Lanfair,	)	
Rachelle Lee	)	
Complainants,	)	Proceeding Number _____
	)	File No. EB-_____ -
v.	)	
	)	
AT&T Corp.	)	
Defendant.	)	
	)	

JOANNE ELKINS, HATTIE LANFAIR AND ROCHELLE LEE's FIRST REQUEST FOR INTERROGATORIES OF AT&T CORP

Pursuant to 47 C.F.R. § 1.729(a), Complainants Joanne Elkins, Hattie Lanfair and Rochelle Lee (Residents) hereby submit to the Federal Communications Commission, and concurrently serves on Defendant AT&T Corp ("ATT"), this First Request for Interrogatories ("Interrogatories"). AT&T shall respond to these Interrogatories in the time provided by 47 C.F.R. § 1.729, in writing, under oath, and in accordance with the Commission's rules and the Instructions and Definitions set forth herein.

DEFINITIONS

1. All terms used herein shall be construed according to common understood definition of the terms and not in complex or highly technical terms, though acronyms and other terms of art in

the telecommunications industry shall have the meaning typically ascribed to them by the industry.

2. “Any” means each, every, and all persons, places, or things to which the term refers.

3. “Communication” means any transfer of information, whether written, printed, electronic, oral, pictorial, or otherwise transmitted by any means or manner whatsoever.

4. “Concerning” means relating to, involving, reflecting, identifying, stating, referring to, evidencing, constituting, analyzing, underlying, commenting upon, mentioning, or connected with, in any way, the subject matter of the request.

5. “Copy” means any reproduction, in whole or in part, of an original document and includes, but is not limited to, non-identical copies made from copies.

6. “Describe” and “description” means to set forth fully, in detail, and unambiguously each and every fact of which you have knowledge related to answering the interrogatory.

7. “Document” means any written, drawn, recorded, transcribed, filed, or graphic matter, including scientific or researchers’ notebooks, raw data, calculations, information stored in computers, computer programs, surveys, tests and their results, however produced or reproduced. With respect to any document that is not exactly identical to another document for any reason, including but not limited to marginal notations, deletions, or redrafts, or rewrites, separate documents should be provided.

8. “Identify,” “identity,” or “identification,” when used in relation to “person” or “persons,” means to state the full name and present or last known address of such person or persons and, if a natural person, his or her present or last known job title, the name and address of his or her

present or last known employer, and the nature of the relationship or association of such person to you.

9. “Identify,” “identity,” or “identification,” when used in relation to “document” or “documents,” means to state the date, subject matter, name(s) of person(s) that wrote, signed, initialed, dictated, or otherwise participated in the creation of the same, the name(s) of the addressee(s) (if any), and the name(s) and address(es) (if any) of each person or persons who have possession, custody, or control of said document or documents.

10. “Identify” when used in relation to a “communication” means to identify the participants in each communication and, if such communication is not contained in a document, the date, place, and content of such communication.

11. “Including” means including but not limited to.

12. “Original” means the first archetypal document produced, that is, the document itself, not a copy. 15. “Person” or “persons” means any natural person or persons, group of natural persons acting as individuals, group of natural persons acting as a group (e.g., as a board of directors, a committee, etc.), or any firm, corporate entity, partnership, association, joint venture, business, enterprise, cooperative, municipality, commission, or governmental body or agency.

13. “Relevant Period” means 2006, to the present, unless otherwise specified.

14. “You,” “your,” or “AT&T” means AT&T Corp any of its parent, affiliated, or subsidiary companies; and employees, officers, directors, agents, representatives, and all other persons or entities acting or purporting to act on their behalf, including without limitation any outside consultant or witness retained by them. In that regard, each and every interrogatory contained herein is directed at you.

INSTRUCTIONS

When responding to the following interrogatories, please comply with the instructions below:

1. Each interrogatory is continuing in nature and requires supplemental responses as soon as new, different, or further information is obtained that is related to answering the interrogatory.

2. Provide all information, including all documents, related to answering the interrogatory that are in your possession, custody, or control, regardless of whether such documents are possessed directly by you or by your employees, officers, directors, agents, representatives, or any other person or entity acting or purporting to act on their behalf.

3. In any interrogatory, the present tense shall be read to include the past tense, and the past tense shall be read to include the present tense.

4. In any interrogatory, the singular shall be read to include the plural, and the plural shall be read to include the singular.

5. In any interrogatory, the use of the conjunctive shall be read to include the disjunctive, and the use of the disjunctive shall be read to include the conjunctive.

6. Any document withheld from production on the grounds of a privilege is to be specifically identified by author(s), addressee(s), length, and date, with a brief description of the subject matter or nature of the document, and a statement of the privilege asserted.

7. Please begin the response to each request on a separate page.

8. Please restate each interrogatory before providing the response or objection.

9. Please specify the interrogatory in response to which any document, narrative response, or objection is provided. If a document, narrative response, or objection relates to more than one request, please cross reference.

10. For each separate interrogatory, identify the person(s) under whose supervision the response was prepared.

11. For any interrogatory consisting of separate subparts or portions, a complete response is required to each subpart as if the subpart or portion were propounded separately.

12. Produce any documents in the form of legible, complete, and true copies of the original documents as "original" is defined herein. To the extent that excel spreadsheets are produced, they should be provided in native format.

13. Please provide all documents in their native format, together with all metadata.

14. If you assert that documents or information related to answering an interrogatory are unavailable or have been discarded or destroyed, state when and explain in detail why any such document or information was unavailable, discarded, or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy, or procedures under which such program was undertaken.

15. If any interrogatory cannot be answered in full after reasonable inquiry, provide the response to the extent available, state why the interrogatory cannot be answered in full, and provide any information within your knowledge concerning the description, existence, availability, and custody of any unanswered portions.

INT REQUEST 1. Share the cost and demand forecast modeling used to determine which neighborhoods in Cleveland OH received VDSL service and/or Fiber to the Home (FTTH).

EXPLAINATION

To the extent that AT&T has claimed that it has selected certain neighborhoods to serve based on cost and demand, providing this information is essential for complainants to ascertain why their homes were omitted.

INT REQUEST 2. Provide all marketing of broadband services which targets African American, Hispanic, Asian and other communities of color and low-income communities in Cleveland and the state of Ohio.

EXPLANATION:

AT&T expressed to the Commission a commitment to serve all communities including those in service areas with high concentration of people of color; and therefore it is important that complainants learn how, if at all, others in their neighborhoods and communities became aware of services and products offered by AT&T.

INT REQUEST 3. Provide how AT&T determines what the average data usage is for various broadband functionality, such as email, streaming movies, internet browsing, music, and gaming.

EXPLANATION

AT&T asserts that it must manage its network efficiently and therefore, it must have established a benchmark or certain standards to determine the amount of usage expended by the average users, high bandwidth users and less active users. Complainants seek access to certain services and must know this information in order to ascertain whether they were properly assessed or perhaps incorrectly assessed because AT&T's knowledge and awareness of their needs are not matched with their actual needs.

INT. REQUEST 5=4 Provide racial and ethnic breakdown of AT&T customers nationwide, Ohio and Cleveland, broken down by municipality or service area.

EXPLANATION

This complaint is based on recently published data by NDIA that suggests AT&T is purposefully bypassing residents by ethnic and racial characteristics and in order to determine if there is corroboration of fact in this data, Complainants would require access to this data that AT&T presumably has in its possession.

INT. REQUEST 5Provide marketing budget directed toward African American, Hispanic, Asian and other communities of color and low-income communities in Cleveland, the state of Ohio, and nationally. Include aggregate marketing budget, in particular, the percentage of the total budget targeting communities of color.

EXPLANATION

AT&T states that it serves the city and it creates marketing materials and advertising in the city to promote services and offerings. Complainants require awareness of the amount of money spent on marketing because that will assist it in determining if the company's outreach spend and effort is adequate given the Complaints concerns about non-ubiquitous adoption. If the problem has to do with marketing, then making the marketing budget available will assist the Complainants and the Commission better understand.

INT. REQUEST 6. Provide total participation rates in AT&T's Access program in Ohio, Cleveland and nationally. Provide all demographic information, including income, race and ethnicity, of participants.

EXPLANATION:

AT&T's program is stated to serve underserved and unserved communities and therefore a breakdown of the demographics of these communities is essential for ascertaining if it is meeting its stated purpose. If Complainants could access this information, they would have a better understanding of AT&T's stated goals of servicing the city.

INT. REQUES 7. Provide cost, service tiers, data limitations, costs per line, tethering and hot spot policies for mobile broadband products offered in the state of Ohio and Cleveland.

EXPLANATION:

To the extent that some members of the Cleveland service area rely on mobile broadband access, Complainants are eager to learn what AT&T's costs, limits and policies are for providing this alternative to Ohio and Cleveland residents that do not have access to terrestrial broadband.

INT. REQUEST 8 Share data regarding the total number of consumer complaints in Cleveland, OH, about the speed of broadband, the geographic location of those complaints, the resolution of those complaints from January 2006 to Present.

EXPLANATION

AT&T is bound by its franchise agreements, its FCC public service obligations and customer service provisions of both to monitor, intake and resolve customer complaints. Complainants would benefit from learning what the process is generally, for AT&T. This information is most likely in the custody of AT&T and providing it would aid the Commission in determining if there are other similarly-situated residents who have put AT&T on notice of their concerns prior to the filing of this Complaint.

INT REQUEST 9 Please provide a listing of all higher income areas in the Cleveland metropolitan area where broadband speeds of the following levels are offered, and AT&T's definition of income: 1.5 Mbps or less; 3 Mbps or less; 6 Mbps or less; 18 Mbps or less; 24 Mbps or less.

EXPLANATION:

The report that spawned and initiated Complainants to file their concerns with the Commission did not identify with more specificity which areas by income have what level of broadband speed access. AT&T is the custodian of this information and if it provides it on the record, the Complainants and the Commission would get a more complete picture of the service demographic by access.

INT REQUEST 10 Current plans to deploy fiber in Cleveland and in the state of Ohio.

EXPLANATION:

To the extent that AT&T has already indicated to the public and the Commission that it intended to deploy fiber in Cleveland and the state of Ohio, it is essential to know whether it has completed its build out or has plans to deploy further.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of Complainant's Complaint, hand delivery by courier to :

AT&T Corp
208 S. Akard Street,
Dallas, Texas 75202

Daryl Parks
Parks & Crump
240 North Magnolia, Drive
Tallahassee, Florida, 32301

(850) 222-3333
(850) 224-6679 (fax)

Counsel for Joanne Elkins, Hattie Lanfair and Rochelle Lee

Dated: August 23, 2017

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Rochelle Lee, Hattie Lanfair,	)	
Joanne Elkins	)	
	)	Proceeding Number _____
	)	File No. EB-_____ -
v.	)	
	)	
AT&T Corp.	)	
One AT&T Way	)	
Bedminster, NJ 07921	)	
	)	

DECLARATION OF JOANNE ELKINS

1. My name is Joanne Elkins; I live at 1423 East 85th Street, Cleveland, OH 44106.

2. I am a residential customer of AT&T. I have purchased broadband service from AT&T since 2009. I received broadband service initially through DSL, followed by Broadband U-Verse. I currently pay $22.00 a month for this service.

3. I would prefer to purchase faster access to the Internet. I have unsuccessfully attempted to obtain better high-speed broadband service from AT&T. Over the years, I have called repeatedly to complain. Servicemen have responded to house calls and the equipment inside my home has been replaced several times. On more than one occasion AT&T measured speed, signal and replaced my box, all to no avail. Recently, on August 18, 2017, with the hope of increasing my Internet speed, I called to inquire about an upgrade to my service. The agent informed me that an upgrade in speed or service is not available to me because of the area that I lived in. To say that I was disappointed is an understatement. I am a four-minute drive from The

Cleveland Clinic and two-minutes drive from the VA Hospital. For me not to have the infrastructure in place to support faster Internet service means that someone made a conscious decision not to build out service in my community; because I am sure those facilities and the area around them have the access they need.

4. I asked the agent to verify the service and speed that I am currently subscribed to. She informed me that my Basic Internet U-Verse speed is 1.5 Mbps.... Less than 2Mbps?? That is utterly ridiculous.

5. I suffer many hardships and consequences due to AT&T's failure to offer me faster high-speed broadband service. 1.) My vision is significantly impaired and continues to weaken. There are several ophthalmology telemedicine services that provide access to specialist, eye-exams, and screenings without me ever having to leave the comfort of my home. Unfortunately, I am unable to take advantage of those services because my Internet service cannot support it. 2.) A few years back, I purchased and installed over $1500 of security equipment for my house. I have eight cameras strategically placed and active to protect my home. The security system has monitoring features that could allow me to check the perimeter and security of my house from my tablet or computer at anytime. Despite the investment I've made to secure my home, protect my loved ones and myself, we are still at risk. The lack of adequate broadband service denies me the opportunity to take full advantage of my remote security system. 3.) Not knowing or understanding that many of my technical issues were caused by low-speed broadband, I lost the money that I spent on a computer. I continuously had problems with it, I kept thinking it was a virus or dated software when all the while it was the broadband and signal problems. I eventually gave the computer away 4.) I want to mention a few general disadvantages. I have grandchildren who enjoy watching videos and movies online,

they cant do that at grandma's house. I am not able to face time or Skype with them or anyone else because of my Internet service. Unlike most people that can quickly download documents and books, I am forced to travel to the library or stores that provide Internet services to take care of simple tasks. It is not fair. 5.) Lastly, I am 69 years old. AT&T is the fabric of my life. Starting with Ohio Bell, I worked for AT&T for most of my adult life. I retired with over 30 years of service to the company. Although I am suffering from the company's failure to deploy adequate coverage to my home and certain communities, I still believe in the brand. I am really hoping this is just an oversight of key decision makers because this is not the AT&T I remember. My AT&T cared about everybody. People ask, "Why haven't you switched companies?" … My response, "because I trust the company to do the right thing.." I firmly believe that when the right people are notified the issues will be fixed. AT&T will eventually get it right.

6. This Declaration has been prepared in support of the foregoing Formal Compliant.

7. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Joanne Elkins

AUG 20TH 2017

Date

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Rochelle Lee, Hattie Lanfair,	)	
Joanne Elkins	)	
	)	Proceeding Number _____
	)	File No. EB-_____ -
v.	)	
	)	
AT&T Corp.	)	
One AT&T Way	)	
Bedminster, NJ 07921	)	
	)	

DECLARATION OF ROCHELLE LEE

1. My name is Rochelle Lee, I live at 2270 East 73rd St., Cleveland, Ohio 44103.

2. I am a residential customer of AT&T. I have been a customer of AT&T for over 20 years.

3. I would prefer to purchase faster access to the Internet. I attempted to obtain faster high-speed broadband service from AT&T but was not able to purchase it because upgrades are not available in the Central Fairfax area of Cleveland, which is the neighborhood that I live in.

4. I am harmed by the failure of AT&T to offer me fast high-speed broadband service in many ways. In general, it affects my everyday life. As an early childhood educator, I lack the ability to conduct day-to-day research on the computer. Participating in blogs or surfing on websites that have many images is a very difficult task because it takes so long to download

certain pages and videos. Additionally, it is unfortunate that my grandchildren are not able to enjoy streaming movies and videos when they are at my house. I could go on and on, but I am not because it pointless. AT&T knows the benefits of high-speed broadband and they know that they have deliberately denied us of those benefits. It makes me so angry to know that a company that I have stuck with for so many years would think so little of my community and me. I read in a recent report that AT&T did not see enough return on their investment to place the proper infrastructure in certain low-income communities. In their eyes, or business plan, we were not worth the investment! Well, what about the return on OUR investments? What about the future of my grandkids and the children in my community? We live in a digital age where the dependency on high speed broadband continues to increase. If these issues are not fixed now generations of young minority kids will be left behind to define a new dark age. Why should a child in Cleveland's inner city receive anything less than a child in the suburbs? The answer is easy… they should not. I have worked most of my life to ensure a better tomorrow for children. I cannot and will not stop now. AT&T must do better.

5. This Declaration has been prepared in support of the foregoing Formal Complaint.

6. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

RACHELLE LEE Rochelle Lee

Rochelle Lee

August 21, 2017
August 21, 2017

Date

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Rachelle Lee, Hattie Lanfair,	)	
Joanne Elkins	)	
	)	Proceeding Number _____
	)	File No. EB-_____ -
v.	)	
	)	
AT&T Corp.	)	
One AT&T Way	)	
Bedminster, NJ 07921	)	
	)	

DECLARATION OF EXPERT WITNESS
BRIAN E. WHITACRE

1. My name is Dr. Brian Whitacre. I am a professor and extension economist in the agricultural economics department at Oklahoma State University.

2. I hold a Ph.D. in economics from Virginia Polytechnic Institute. For the last 11 years, my academic position has focused on what technology can mean for domestic economic development. A heavy portion of my research (and outreach) is dedicated to the economic impacts associated with broadband technology. Therefore, I am well-versed in the data and software tools used to explore broadband provision across the United States. Attached is my resume detailing my professional expertise.

3. I have reviewed in detail and am familiar with the contents of the Connect Your Communities and National Digital Inclusion Alliance report titled, *AT&T's Digital Redlining*. In my professional opinion, the report is accurate and has been conducted according to the

professional standards of my profession. As part of my work on this project, I was able to replicate the report results using the publicly available datasets cited (FCC Form 477 from June 2016; Census poverty rates from the 2011-2015 ACS).

4. The report demonstrates that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates, relegating them to Internet access services which are vastly inferior to the services enjoyed by their counterparts nearby in the higher-income Cleveland suburbs.

Background

5. In 2016, Connect Your Community and National Digital Inclusion Alliance learned that residents of many Cleveland neighborhoods were being declared ineligible for AT&T's "Access" discount rate program, solely because they couldn't get AT&T connections at the 3 Mbps download speed which was then the program's minimum requirement.

6. AT&T Access offers discounted broadband service to low-income households, and was adopted by AT&T as a voluntary condition as part of Federal Communication Commission approval of its merger with DirecTV.

7. In order to further explore the quality of service offerings by AT&T in Cleveland, CYC and NDIA undertook an analysis of broadband infrastructure deployment in Cleveland using census block level data submitted to the Federal Communications Commission by AT&T via FCC Form 477.

Data Source and Study Goals

8. The FCC's Fixed Broadband Deployment Data is based on Form 477 reports gathered every six months from all regulated Internet Service Providers. It's released to the

public on the FCC website six months to a year later. Among other things, the Form 477 deployment data includes individual companies' own accounts of the broadband technology they're using to deliver residential service in each Census block, and the "Maximum Advertised Download Speed" (as well as Upload Speed) for each such technology in that block.

9. In the case of AT&T, Form 477 block data shows where the company is offering 18, 24, 45 or 75 mbps download speeds via fiber-enhanced VDSL service, or even gigabit speeds via Fiber To The Home (FTTH), and where their Internet service is limited to slower speeds (often much slower) because it's still delivered over copper wires from a "central office" that may be miles away, using a version of old-style ADSL technology called ADSL2.

10. Census block data in Form 477 lists the maximum speed of as few as one or two addresses in a block. Therefore if a Census block is listed as ADSL2 "Maximum Advertised Download Speed" of 18 mbps, it is impossible to assume that every household in that block can get that speed.

11. On March 3, the FCC posted its latest round of Census block broadband deployment data, drawn from providers' Form 477 reports for June 2016. The CYC/NDIA analysis is based on that most recent release.

12. CYC and NDIA undertook this analysis to learn what the new Form 477 Census block data tell us about three questions: 1) Where has AT&T invested in providing its mainstream Internet speeds and video services to residents, and where has it chosen not to do so? 2) How does AT&T's deployment of FTTH/VDSL service compare to the distribution of high poverty areas, especially in Cleveland? 3) Where are AT&T's "maximum advertised download speeds" still provided by ADSL2 technology – i.e. old-style copper wire from a "central office"

– and what are those speeds, especially in the Census blocks farther away from the central offices serving them?

13. To address the first two questions, CYC and NDIA mapped all the Census blocks in Cuyahoga County where AT&T's Form 477 data indicates it was able to provide Internet access via VDSL technology to at least one household, at a maximum download speed of 18 mbps or more, in June 2016. (CYC and NDIA included a couple of blocks where the data show FTTH service with 1 Gbps download speeds.) Then CYC and NDIA overlaid a map of all the Census block groups in the county where 35% of residents had incomes below the poverty line according to the most recent Census data available (from 2011-2015).

AT&T home broadband technologies

14. In general, AT&T offers home Internet, "cable" TV programming and IP phone services using one of three delivery technologies: Fiber To The Home, Fiber To The Node / VDSL, and ADSL2.

15. The newest and fastest of the three, not yet available in most of the Cleveland market but coming on rapidly in other metros, is Fiber To The Home (FTTH) – now branded as "AT&T Fiber". As the name suggests, this is very fast service (typically up to 1,000 mbps, i.e. 1 gbps) delivered by optical fiber all the way to the customer premises.

16. The current mainstream AT&T home network technology, built out in Ohio and other markets between 2007 and 2014, is Fiber To The Node (FTTN). Data travels via fiber to a "Video Ready Access Device" (VRAD) in a wiring cabinet in a neighborhood, often on a tree lawn or similar location, and then from the VRAD to the customer premises via a copper loop. AT&T's FTTN system uses an advanced digital subscriber line technology called "Very-high-bit-rate digital subscriber line" or VDSL. VDSL technology can transmit data downstream and

upstream simultaneously, at speeds of 100 mbps or more. AT&T's Form 477 data lists "maximum advertised download speeds" for VDSL service of 18, 24, 45, and 75 mbps.

17. Where AT&T hasn't upgraded its service to either FTTH or FTTN, new accounts are served using an older technology called "asymmetric digital subscriber line 2" (ADSL2 or ADSL2+). Data travels to an AT&T "central office" via fiber optics, is run through a "Digital Subscriber Line Access Multiplexer" (DSLAM) there, and then is sent over a copper loop to the customer premises – often a distance of two to three miles or more. The ADSL2 technology used by AT&T has a maximum download speed of 18 to 24 mbps near the DSLAM, but drops rapidly to 6 mbps, 3 mbps or less at distances above a mile.

18. I and the study authors understand, and believe to be true, that AT&T categorizes its "advertised speeds" as follows. AT&T's three lowest advertised speed tiers — and price levels — are now "up to 3 mbps", "up to 6 mbps", and "up to 24 mbps." A service whose maximum speed is 768 kbps is considered "up to 3 mbps" under AT&T's rubric. If a customer's available download speed is really 12 mbps, under AT&T's rubric, that service is considered "up to 24 mbps" on that customer's bill.

Consumer Use of Broadband and Benefits of Broadband Competition

19. Consumers view ADSL and VDSL2 as services which meet the same needs. Both are broadband services used to reach the Internet, stream video, and other similar needs. Both offerings also compete with other providers of broadband services, such as wired services offered by multichannel video programming distributor, *i.e.*, traditional cable operators.

20. Wireless broadband services, while they provide some similar access to broadband services, are qualitatively different from wired services. Indeed, the FCC's own 2016 Broadband Progress Report notes, "We find today that fixed and mobile broadband are often

used in conjunction with one another and, as such, are not functional substitutes." (p. 6) The report also finds that, "fixed and mobile broadband are currently tailored to serve different consumer needs." (p. 6) Wireless services are typically subject to data caps or limitations after a particular data threshold is met, and typically must be purchased for each device used, rather than shared like wired services. They also suffer noticeable reductions in speed and quality if multiple devices share the same data stream, such as through a mobile wifi hotspot. Therefore, mobile services are often much more expensive and slower than wired services and do not offer as great a value, particularly for low-income consumers.

21. The lack of competitive fiber-based products reduces competition in the provision of broadband services. Therefore, communities and individual customers who are limited to fixed broadband service offerings from only a single provider generally face higher prices and lower quality than they would if more than one provider of services were available. The problematic nature of limited broadband competition is firmly established in the economic literature.

Analysis

22. The resulting study, *AT&T's Digital Redlining*, its analysis, methodology, maps and conclusions, is attached and incorporated to this declaration by reference.

23. As detailed below, the study offers clear evidence that AT&T has withheld the standard product offering for most suburbs- its fiber-enhanced "Fiber To the Node" VDSL infrastructure ("FTTN")– from the overwhelming majority of census blocks with individual poverty rates above 35%. As a consequence, residents of these neighborhoods: suffer uneven, often severely limited Internet access , in many cases 3 mbps downstream or less, and also lack

access to AT&T's competitive fiber-enabled video service and the benefits such competition and service would bring.

Maps, Data Analysis, and Findings

24. To support these conclusions the report analyzed data and produced a series of maps demonstrating the following:

25. Map 1: Cuyahoga County Census blocks with AT&T VDSL or FTTH at maximum advertised download speeds of 18 mbps or more, June 2016 | Block groups with 35% or greater poverty. Map 1 is available in the report on page 3 and online at https://digitalinclusion.carto.com/viz/ed6fbbba-0052-11e7-997a-0e3ebc282e83/public_map. AT&T's FTTN network covers most of Cuyahoga County but not most Census blocks in Cleveland, especially those in high-poverty neighborhoods.

26. Map 2: Cleveland Census blocks with AT&T VDSL or FTTH at maximum advertised download speeds of 18 mbps or more, June 2016 | Block groups with 35% or greater poverty | City of Cleveland VRAD Permits. Map 2 is available in the report on page 3 and online at https://digitalinclusion.carto.com/viz/0a770a2e-00e4-11e7-bf2d-0e3ebc282e83/public_map. AT&T's FTTN network buildout in the city of Cleveland was concentrated in middle-income neighborhoods, as evidenced not just by FCC data but also by City permits issued for VRAD cabinets. The buildout bypassed the entire northeast side and most of the near West Side.

27. Most of Cuyahoga County's suburban communities are fully covered by AT&T's mainstream FTTH/VDSL service. Most of the city of Cleveland is not.

28. Not counting vacant industrial blocks and Hopkins airport, the new Form 477 data lists 13,457 Census blocks in Cuyahoga County served by AT&T with ADSL2, VDSL, or FTTH service. Of the 5,567 blocks located in the city of Cleveland, in only 34% (1,904) is the

Maximum Advertised Download Speeds provided by VDSL or FTTH. Of the 7,890 blocks in the rest of the county, the FTTH/VDSL percentage is 61%.

29. Within the city, the Census blocks served by AT&T's FTTN/VDSL infrastructure — those where neighborhood fiber and VRAD cabinets have been deployed — are concentrated in relatively middle-income neighborhoods in the far Southwest and Southeast sides, Old Brooklyn, the outermost blocks of North Collinwood, Shaker Square, etc. Except for that sliver of North Collinwood, there's not a single VRAD location in the entire northeast quadrant of the city — in Central, Fairfax, Hough, Glenville, St. Clair-Superior, or South Collinwood. No FTTN infrastructure has been installed in Buckeye-Woodland, Union-Miles, Detroit-Shoreway, Ohio City, Stockyards or Clark-Fulton.

30. There is a glaring correlation between areas where AT&T has not invested in FTTN service and areas of high poverty.

31. Map 3: Cleveland Census blocks with AT&T VDSL or FTTH at maximum advertised download speeds of 18 mbps or more, June 2016 | Block groups with 35% or greater poverty | AT&T Central Office. Map 3 is available in the report on page 3 and online at https://digitalinclusion.org/wp-content/uploads/2017/03/att-cleveland-central-offices.png. AT&T apparently chose not to install FTTN infrastructure anywhere in the areas served by its four Cleveland central offices with the greatest concentration of high-poverty neighborhoods.

32. The absence of FTTN in these lower-income neighborhoods, and the overall disparity in FTTN deployment between Cleveland and the suburbs, can be traced largely to AT&T's failure to deploy FTTN anywhere in the service areas of four "central offices" (COs, or wire centers) with large lower-income customer bases: those at 6513 Guthrie, 5400 Prospect,

2130 East 107th, and 12223 St. Clair. FTTN deployment is also very limited in the service area of the CO at 7225 Broadway, which serves another high-poverty neighborhood.

33. Because AT&T hasn't chosen to invest in FTTN infrastructure in these central office service areas, their neighborhoods must depend for AT&T Internet access on ADSL2 technology — data transmitted from the central office via copper wires.

34. Map 4: Cuyahoga County Census blocks with maximum advertised AT&T fixed Internet download speeds provided by ADSL2, June 2016. Map 4 is available in the report on page 4 and online at https://digitalinclusion.carto.com/viz/04a3edea-00f5-11e7-8fde-0ee66e2c9693/public_map. Where AT&T has not deployed FTTN technology, home Internet speeds delivered by the ADSL2 network vary widely depending on proximity to a central office. Maximum download speeds of 3 Mbps or less are common.

35. Map 5: Cleveland Census blocks with maximum AT&T fixed Internet download speeds of 6 mbps or less, any technology, June 2016. Map 5 is available in the report on page 4 and online at https://digitalinclusion.carto.com/viz/b8570d4a-011d-11e7-9c8e-0ee66e2c9693/public_map. Map 5 shows the Cleveland Census blocks with maximum AT&T wireline Internet speeds of 6 Mbps or less, June 2016. As this map demonstrates, over 22% of Cleveland Census blocks were reported by AT&T to have maximum residential download speeds of 3 Mbps or less. 55% had maximum download speeds no greater than 6 Mbps. The comparable percentages for the rest of Cuyahoga County were 12% and 24%, respectively.

Conclusions

36. The analysis shows a clear and troubling pattern: A pattern of long-term, systematic failure to invest in the infrastructure required to provide equitable, mainstream Internet access to residents of the central city (compared to the suburbs) and to lower-income

city neighborhoods. Specifically, AT&T has chosen not to extend its "FTTN" VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%.

37. The study's results provide clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates – including Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others.

38. The Cleveland neighborhoods that did not receive VDSL investments have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs.

39. As a result, their residents are left with: 1) uneven, often severely limited Internet access – in many cases 3 Mbps downstream or less; and 2) no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for "cable franchise reform", i.e. the elimination of municipal cable franchising, in Ohio in 2007.

40. Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, I agree with NDIA and CYC's conclusion that they constitute strong evidence of a policy and practice of "digital redlining" by AT&T — *i.e.* income-based discrimination against residents of lower-income urban neighborhoods in the types of broadband service AT&T offers, and in the company's investment in improved service.

41. This Declaration has been prepared in support of the foregoing Formal Compliant.

42. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

43. I certify that I was able to replicate the NDIA report findings using the publicly available data referenced in the report.

44. I declare under penalty of perjury that the foregoing is true and correct.

45. Executed on August 21, 2017.

EXPERT SIGNATURE

Brian E. Whitacre
Professor
Oklahoma State University
Department of Agricultural Economics
504 Ag Hall
Stillwater, OK 74078
Phone: (405) 744-9825
Fax: (405) 744-9835
brian.whitacre@okstate.edu

EDUCATION

Ph.D. Economics, December 2005
Virginia Polytechnic Institute and State University (Virginia Tech), Blacksburg, VA

EXPERIENCE

June 2006 – Present — Assistant (06-11), Associate (11-16), Full Professor, Oklahoma State
Department of Agricultural Economics
62% Extension, 25% Research, 13% Teaching

REFEREED JOURNAL PUBLICATIONS (43 total, most relevant in last 3 years shown)

Hyun Ji Lee* and **Brian Whitacre**. Forthcoming. "Estimating Willingness to Pay for Broadband Attributes among Low-Income Consumers: Results from Two FCC Lifeline Pilot Projects." *Telecommunications Policy*. Link

Brian Whitacre. Forthcoming. "Fixed Broadband or Mobile: What Makes Us More Civically Engaged?" *Telematics and Informatics*. Link

Kelsey Conley* and **Brian Whitacre** (senior authorship shared). 2016. "Does Broadband Matter for Rural Entrepreneurs or 'Creative Class' Employees?" *Review of Regional Studies* 46(2): 171-190. Link

Brian Whitacre and Colin Rhinesmith. 2016. "Broadband Un-adopters." *Telecommunications Policy* 40(1): 1-13. Link

Brian Whitacre, Sharon Strover, and Roberto Gallardo. 2015. "How Much Does Broadband Infrastructure Matter? Decomposing the Rural – Urban Adoption Gap with the Help of the National Broadband Map." *Government Information Quarterly* 32(3): 261-269. Link

Brian Whitacre and Colin Rhinesmith. 2015. "Public Libraries and Residential Broadband Adoption: Do More Computers Lead to Higher Rates?" *Government Information Quarterly* 32(2): 164-171. Link

Brian Whitacre. 2015. "Rural Electronic Medical Record Adoption Rates Overtake Those in Urban Areas." *Journal of the American Medical Informatics Association* 22(2): 399-408. Link

Brian Whitacre and Randi Williams*. 2015. "Electronic Medical Record Adoption in Oklahoma Practices: Rural – Urban Differences and the Role of Broadband Availability." *The Journal of Rural Health* 31(1): 47-57. Link

Brian Whitacre, Roberto Gallardo, and Sharon Strover. 2014. "Broadband's Contribution to Economic Growth in Rural Areas: Moving towards a Causal Relationship." *Telecommunications Policy* 38(11): 1011-1023. Link

Brian Whitacre, Roberto Gallardo, and Sharon Strover. 2014. "Does Rural Broadband Impact Jobs and Income? Evidence from Spatial and First-Differenced Regressions." *The Annals of Regional Science* 53(3): 649-670. Link

Brian Whitacre, Terry Griffin, and Tyler Mark. 2014. "How Connected are Our Farms?" *Choices* 29(3). Link

Brian Whitacre and Lara Brooks. 2014. "Do Broadband Adoption Rates Impact a Community's Health?" *Behaviour & Information Technology* 33(7): 767-779. Link

EXTENSION PROGRAM ACTIVITIES

E-commerce Workshops / Presentations

- Hands-on workshops are at least 3 hours long and are held in a computer lab. Specific e-commerce topics include: Small Business Websites, PayPal 101, Ins and Outs of Online Storefronts, Search Engine Optimization, and Social Networking.

	2008	2009	2010	2011	2012	2013	2014	2015
Hands-on workshops								
Number	15	12	18	21	13	8	9	12
Attendance	188	184	308	236	155	90	75	115
% ranking "very useful"	86%	87%	89%	91%	91%	92%	95%	95%
In-service trainings	1	2	2	1	2	1	1	1
Extension Publications	3	2	5	1	1	1	1	1

Research / Extension Awards:

- James Whatley Award for Meritorious Research in Agricultural Sciences (2015). OSU Division of Natural Resources.
- Excellence in Regional Economic Development Work Award (2015). Stronger Economies Together (SET) National Program. For work with Western Oklahoma I-40 Corridor Team.
- Distinguished Extension / Outreach Program Award: Individual Less than Ten Years' Experience (2013). Agricultural and Applied Economics Association (AAEA).
- Outstanding Supporting Individual (2013). Great Plains Resource Conservation & Development. For work on Stronger Economies Together (SET) Program.
- Bonnie Teater Community Development Early Career Achievement Award (2011). Honors "rising star" in the field of Community Development (less than 10 years of service). Given by Southern Rural Development Center (SRDC).

TEACHING

Courses Taught and Student Ratings (last 3 years)

Oklahoma State University, Department of Agricultural Economics	Rating	# students
• Rural Economic Development, Spring 2016	4.9 / 5.0, dept. avg 4.2	58
• Spatial Econometrics (1-credit - Ph.D. level) Spr. 2016	5.0 / 5.0, dept. avg 4.5	13
• Rural Economic Development, Spring 2015	3.8 / 4.0, dept. avg 3.5	50
• Spatial Econometrics (1 credit - Ph.D. level) Spr. 2014	4.0 / 4.0, dept. avg 3.6	12
• Rural Economic Development, Spring 2014	3.6 / 4.0, dept. avg 3.4	58

GRANTS

- PI or co-PI on over $2.7M in funded grants from sources including USDA RUS, U.S. DHHS, IMLS, DEQ, SRDC, HRSA, USDA ERS, and EDA.

PARKSCRUMP
ATTORNEYS AT LAW
A LIMITED LIABILITY COMPANY

BY COURIER

April 24, 2017

Randall Stephenson
Chairman, CEO and President
AT&T
208 S. Akard Street
Dallas, TX 75202

Stacey Maris
Senior Vice President and Secretary
AT&T
208 S. Akard Street, Suite 3241
Dallas, TX 75202

Dear Mr. Stephenson and Ms. Maris:

Re: Redlining

We represent broadband consumers in Cleveland, Ohio ("Cleveland Broadband Consumers") who have been and continue to be irreparably injured by AT&T's deliberate pattern and practice of offering critical fast home broadband service disproportionately to residents of high-income zip codes, while offering only much slower and inherently inferior service to residents of low-income zip codes.

This invidious practice was copiously documented by a National Digital Inclusion Alliance (NDIA) report, "AT&T's Digital Redlining" (March 10, 2017) (https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/) (last visited April 18, 2017). Excerpts of the report summary are set out below (emphasis in original):

> A mapping analysis of Federal Communications Commission broadband availability data, conducted by Connect Your Community and the National Digital Inclusion Alliance, strongly suggests that **AT&T has systematically discriminated against lower-income Cleveland neighborhoods in its deployment of home Internet and video technologies over the past decade.**
>
> Our analysis, based on newly released FCC Form 477 Census block data for June 2016, provides clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high

240 N. Magnolia Drive
Tallahassee, FL 32301
v 850 222 3333
f 850 224 6679
w ParksCrump.com

poverty rates – Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others.

This analysis is part of a six-month effort that began when CYC and NDIA learned that residents of many Cleveland neighborhoods were being declared ineligible for AT&T's "Access" discount rate program, solely because they couldn't get AT&T connections at the 3 mbps download speed that was then the program's minimum requirement.

After analyzing previous FCC Form 477 data releases, along with City construction permits and other information, we've come to believe that the ultra-slow AT&T Internet speeds available to those Access applicants reflect a larger problem: AT&T's failure to invest to upgrade most of its Cleveland network to the company's mainstream technology.

Specifically, AT&T has chosen not to extend its "Fiber To the Node" VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%.

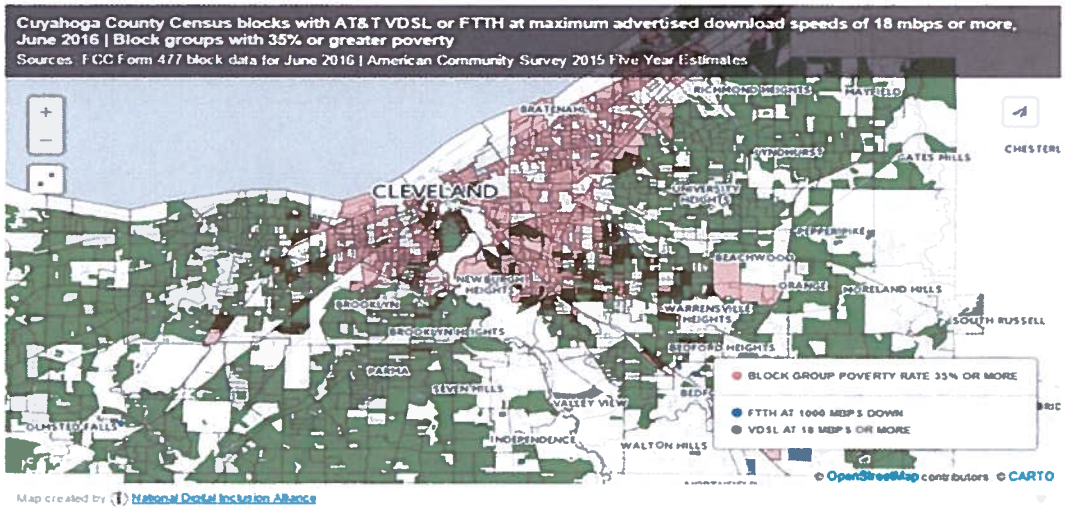
These neighborhoods have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs.

As a result, their residents are left with uneven, often severely limited Internet access – in many cases 3 mbps downstream or less; and no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for "cable franchise reform", *i.e.* the elimination of municipal cable franchising, in Ohio in 2007.

Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, NDIA and CYC believe they constitute strong evidence of a policy and practice of **"digital redlining"** by AT&T – *i.e.* income-based discrimination against residents of lower-income urban neighborhoods in the types of broadband service AT&T offers, and in the company's investment in improved service.

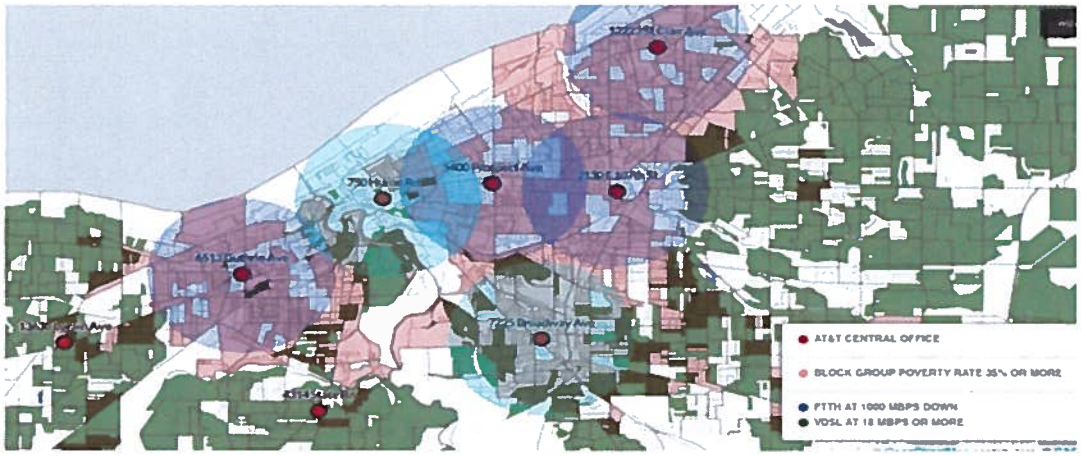
The NDIA study's maps are stunning:

MAP 1: AT&T's Fiber To The Node network covers most of Cuyahoga County but not most Census blocks in Cleveland, especially those in high-poverty neighborhoods.

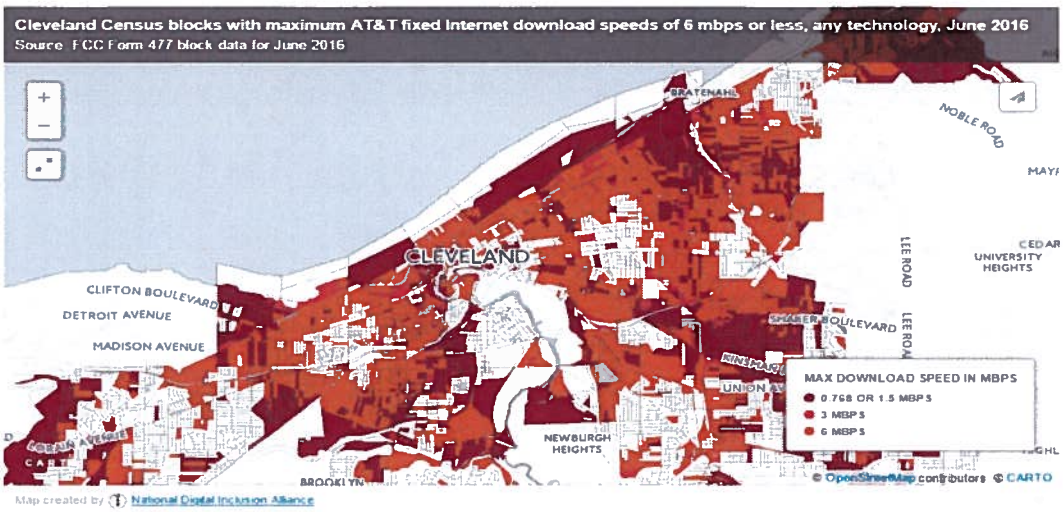


MAP 3: AT&T apparently chose not to install Fiber To The Node infrastructure anywhere in the areas served by its four Cleveland central offices with the greatest concentration of high-poverty neighborhoods.

The absence of FTTN in these lower-income neighborhoods, and the overall disparity in FTTN deployment between Cleveland and the suburbs, can be traced largely to AT&T's failure to deploy FTTN anywhere in the service areas of four "central offices" (COs, or wire centers) with large lower-income customer bases: those at 6513 Guthrie, 5400 Prospect, 2130 East 107th, and 12223 St. Clair.



MAP 5: Cleveland Census blocks with maximum AT&T wireline Internet speeds of 6 mbps or less, June 2016



See https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/ (last visited April 19, 2017); *see* also https://drive.google.com/file/d/0B62ag-I_FGHrbTYtMGdKOXZ4NmM/view (last visited April 20, 2017).

They are reminiscent of maps that depicted redlining by banks, insurance companies, and ambulance services two generations ago. *See* http://connectyourcommunity.org/atts-digital-redlining-of-cleveland-report/ (last visited April 18, 2017).

In his first major address, delivered at Carnegie Mellon University March 15, no less an authority than the Chairman of the Federal Communications Commission declared that the study "fiber was much less likely to be deployed in the low-income neighborhoods" (*see* https://www.fcc.gov/document/chairman-pai-bringing-benefits-digital-age-all-americans (last visited April 18, 2017)).

In response to the NDIA study, the citizen group Public Knowledge, one of the nation's leading authorities on universal service, declared that:

> Digital redlining and denying essential connectivity to low-income communities is contrary to America's longstanding commitment to universal service and our values as a nation…These bypassed low-income neighborhoods have no options for high-speed fixed broadband service and must settle for lower speeds. As a result, families in these areas are more likely to rely on mobile broadband, which is significantly more expensive on a per GB basis.
>
> While it is essential that broadband providers upgrade and modernize their networks to support the increasing demands of consumers and businesses, it is also imperative that they remain committed to the principles of universal service and the Network Compact.

> For generations, it has been the policy of the United States that the benefits of essential connectivity should be available to all Americans, and there has long been overwhelming bipartisan consensus that part of ensuring universal service is making certain that communications services are both available and affordable. Unfortunately, it appears that those values are currently missing in AT&T's deployment in Northeastern Ohio.

See https://www.publicknowledge.org/press-release/public-knowledge-responds-to-ndia-report-indicating-att-discrimination-in-o (last visited April 18, 2017).

AT&T's March 12, 2017 response to the NDIA Study failed to confront the issue of redlining. Stating that the company had invested $325 million in broadband infrastructure in Cleveland (2013-2015) and that it was "investing in technologies that will mitigate some of the infrastructure limitations" at some unspecified point in the future, AT&T virtually conceded that it redlined. *See* http://www.news5cleveland.com/news/local-news/oh-cuyahoga/atts-digital-redlining-of-cleveland-neighborhoods (last visited April 18, 2017).

Whether or not AT&T acted with malicious intent to hurt the poor is quite irrelevant. From the vantage point of the residents of low-income zip codes, their AT&T broadband service deficiency is no different than if they were struck by an errant AT&T bucket truck on the highway, or deprived of AT&T telephone service because the aging copper wires failed in a storm. Whether or not AT&T set out deliberately to injure them, they were injured nonetheless.

As a common carrier for over 100 years, AT&T is accustomed to providing equal service to all consumers. Thus it is surprising that AT&T would so brazenly offer unequal service to the citizens of Cleveland. What is especially troubling is that in 2007, AT&T took the lead in persuading the Ohio General Assembly to eliminate municipal franchising of cable television providers by promising a new era of cable competition, according to NDIA. *See* http://www.news-herald.com/article/HR/20070924/NEWS/309249985 (last visited April 18, 2017). Municipal franchising would have prevented redlining, and in 2007 AT&T promised never to redline. But now it appears to have redlined Ohio's largest city.

Fast broadband is a necessity in today's society, as AT&T has long contended and accurately so. Its March 12 response to the NDIA study began by proclaiming that "[a]ccess to the internet is essential." *See* http://www.news5cleveland.com/news/local-news/oh-cuyahoga/atts-digital-redlining-of-cleveland-neighborhoods (last visited April 19, 2017). AT&T often makes this point when seeking regulatory relief. *See, e.g.,* AT&T Comments, Lifeline and Linkup Reform and Modernization, FCC WC Docket 11-42 (August 31, 2015), p. 2 ("broadband Internet access service has eclipsed voice service as the critically

important tool in everyday life") (*see* https://ecfsapi.fcc.gov/file/60001223938.pdf (last visited April 19, 2017)). And AT&T is correct. In today's society, broadband is as vital to survival as health care, education and employment. Indeed broadband is the vehicle by which consumers most readily access each of those independently essential attributes of life.

We are studying these threshold questions:

- Does AT&T's behavior in Cleveland, and any other cities where similar practices may exist, violate 42 U.S.C. §1981's command that "[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as enjoyed by white citizens"?

- Does AT&T's behavior in Cleveland trigger an obligation of the FCC, and of the Ohio Public Service Commission, under Section 706 of the Telecommunications Act of 1996, to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" by restraining AT&T from continuing to redline and supervising AT&T's transition to providing equal service to all Cleveland consumers?

- If, as NDIA has alleged, AT&T secured, from the State of Ohio, regulatory relief premised on assurances that AT&T would not redline, but thereafter AT&T redlined, should the State of Ohio reverse itself?

- Is AT&T's behavior relevant to its FCC character qualifications or its DOJ competitive qualifications to complete its merger with Time Warner, Inc.?

- Should broadband consumers in Cleveland and elsewhere who find AT&T's practices morally offensive stop purchasing goods and services from AT&T?

We would appreciate an opportunity to meet with you immediately discuss these matters. Further, as an AT&T shareholder, Mr. Parks respectfully requests an opportunity to address the Board of Directors at AT&T's April 28, 2017 shareholders' meeting. He will limit his remarks to the question of how AT&T's broadband deployment in Cleveland impacts shareholder interest because redlining undermines brand loyalty and thus diminishes sales while increasing churn; and universal fast broadband lifts the poor into the middle class, thus turning loyal but low-spending customers into loyal high-spending customers.

Specifically, Mr. Parks will recommend that an appropriate committee of the board be directed to work collaboratively with Cleveland Broadband Consumers to develop

a plan that will promptly and permanently put an end to even the appearance of redlining by AT&T. Should this collaborative approach be rejected, Cleveland Broadband Consumers will be compelled to use whatever lawful means are available to them to seek redress.

This matter came to light after the November 11, 2016 deadline for submission of stockholder proxy materials to be considered at the Annual Meeting. It is, however, of urgent and timely importance to the shareholders. Its resolution cannot wait until 2018. The Board is empowered to hear the concerns of the shareholders and take remedial steps now. *See* AT&T Bylaws, Article I, Sections 8(b) and (c).

We wish to share this letter with the members of the AT&T Board of Directors. To accomplish that, we respectfully request that you transmit the letter to each director via internal AT&T mail to ensure that it is properly and immediately received.

Sincerely,

Daryl D. Parks, Esquire
Parks & Crump, LLC
240 N. Magnolia Drive
Tallahassee, FL 32301
(850) 224-6400

cc: AT&T Board of Directors:

- Samuel DiPiazza
- Richard Fisher
- Scott Ford
- Jimmy Hayes
- Glenn Hutchins
- William Kennard
- Joe Madonna
- Michael McAllister
- John McCoy
- Beth Mooney
- Joy Roche
- Matthew Rose
- Cynthia Taylor
- Laura Tyson
- Geoff Yang

State of Ohio

- Governor John R. Kasich
- Clifford A. Rosenberger, Speaker of the House
- House of Representatives, The Ohio Legislature
- Larry Obhof, Senate President
  Senate, The Ohio Legislature
- Fred Strahorn, Minority Leader
  House of Representatives, The Ohio Legislature
- Joseph Schiavoni, Minority Leader
  Senate, The Ohio Legislature

Members of Congress:

- Hon. Greg Walden
  Chairman, Committee on Energy & Commerce
- Hon. Marsha Blackburn
  Chairman, Subcommittee on Communications and Technology
  Committee on Energy and Commerce
- Hon. Frank Pallone
  Ranking Member, Committee on Energy and Commerce
- Hon. Michael Doyle
  Ranking Member, Subcommittee on Communications and Technology
  Committee on Energy and Commerce
- Hon. Bobby Rush
  Member, Subcommittee on Communications and Technology
  Committee on Energy and Commerce
- Hon. G.K. Butterfield
  Member, Subcommittee on Communications and Technology
  Committee on Energy and Commerce
- Hon. Yvette Clarke
  Member, Subcommittee on Communications and Technology
  Committee on Energy and Commerce
- Hon. Marcia Fudge
  Member of Congress (11th District, Ohio)
- Hon. Joyce Beatty
  Member of Congress (3rd District, Ohio)

Stacey Maris
Senior Vice President -
Assistant General Counsel and Secretary

AT&T Inc.
208 S. Akard Street
Room 3241
Dallas, TX 75202

T 214.757.3330
stacey.maris@att.com

April 28, 2017

Mr. Daryl D. Parks, Esquire
Parks & Crump, LLC
240 N. Magnolia Drive
Tallahassee, FL 32301

Via Facsimile and U.S. Mail

Dear Mr. Parks:

Re: April 24 Letter Regarding Broadband Deployment in Cleveland

This letter follows my letter of April 25, 2017 concerning the above-referenced matter. As you requested, your April 24 letter was considered by the full AT&T Board of Directors at its meeting yesterday. After discussion, the Board instructed Management to prepare a fulsome response to your letter.

Per the Board's instruction, AT&T will deliver a substantive response to your letter promptly. In the meantime, please rest assured that AT&T, including its Board, takes the issues you raise seriously, but we do not agree with the allegations contained in your letter. Over the past five years, we have invested $135 billion in our wireless and wired networks to bring broadband to consumers, and we don't favor any demographic when it comes to providing any service we offer.

Thank you for your correspondence to the AT&T Board of Directors. If I can answer any questions, please do not hesitate to give me a call.

Sincerely,

Stacey Maris

Stacey Maris

AT&T

James Meza III
Senior Vice President
and Asst. General Counsel

AT&T Services Inc.
2260 East Imperial Hwy.
El Segundo, CA 90245

T: 310-964-1454
james.meza@att.com

Licensed in TX & LA
CA Registered In-House Council

May 5, 2017

Mr. Daryl D. Parks, Esquire
Parks & Crump, LLC
240 North Magnolia Drive
Tallahassee, Florida 32301

Via Facsimile and U.S. Mail

Re: *April 24, 2017 Letter Regarding Broadband Deployment in Cleveland, Ohio*

Dear Mr. Parks:

As you are aware, the AT&T Board of Directors has received and considered your letter referenced above. After discussion, the Board directed that AT&T prepare this substantive response. I am the Legal Officer responsible for the operations of AT&T's Entertainment Group, which provides wireless and wired broadband service to U.S. consumers. Going forward, I will be your contact point for any questions or correspondence related to this issue.

First and foremost, please rest assured that we take seriously the issues raised in your letter. Providing ubiquitous high-speed access to the internet is central to our mission as a company. Over the past five years alone, we have invested $135 billion in our wired and wireless broadband networks – more than any other public company in any industry in the United States – to allow Americans of all income levels the opportunity to enjoy all that the internet offers.

Second, we will continue to expand our broadband footprint in Ohio and other states we serve. We invested more than $1.4 billion in our Ohio networks over the past three years, and $200 million in Cleveland specifically. At the same time, we are continuing to implement our plan to deploy fiber-to-the-premises to at least 12.5 million mass market customer locations in our wireline footprint by 2019. Further, we are experimenting with new technologies (including fixed wireless, 5G wireless, and other new technologies) to bring even more high speed broadband connections to consumers across our footprint. We also are participating in the FCC's Connect America Fund program to extend our reach as we continue to invest in our world-class wireless network.

Third, AT&T is engaged in a targeted effort to promote broadband adoption by low-income customers. We call it "Access from AT&T," and it features low monthly rates for the fastest of five wireline broadband services available to eligible participants – 10 Mbps and 5Mbps for $10 per month, and 3Mbps, 1.5Mbps or 768Kbps for $5 per month. We also waive credit checks and installation and equipment fees for participating households. We have partnered with national, state and local groups across the country (including in Cleveland) to educate potential participants regarding this program. And we have joined with the U.S. Department of Housing and Urban Development's ConnectHome initiative to help connect families living in HUD-assisted housing to low-cost Internet service.

With this background, let me now address the allegations in your letter, with which we respectfully disagree. Put simply, we do not engage in so-called digital redlining. Your allegations rely on a study by the National Digital Inclusion Alliance (NDIA), [1] which purports to find evidence of redlining based on an analysis of AT&T's wireline broadband deployment in only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint). This study is flawed and its conclusions are specious. AT&T's investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. Many factors are considered in this analysis. They include the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do *not* include household income, race or ethnicity; those considerations simply are not part of our analysis.

Indeed, nothing in the NDIA study demonstrates otherwise. The five Cleveland wire centers on which NDIA hinges its analysis do not paint a complete or accurate portrait of our broadband offerings in Cleveland or elsewhere in Ohio. Across Ohio, including the Cleveland area, there are higher income areas to which AT&T currently can provide only lower speed wireline broadband services, and there are lower income areas to which we currently offer higher speed services. Indeed, looking at AT&T's deployment of wireline broadband across its entire Ohio footprint reveals that the proportion of customers with access to AT&T's higher speed wireline broadband services (18Mbps and faster) and lower speed services (6Mbps or slower) is roughly comparable, regardless whether households are below the poverty line or not.

NDIA's study is flawed in other respects as well. Among other things, it ignores AT&T's deployment of, and consumer demand for, mobile broadband services. AT&T's LTE mobile broadband network and services are available ubiquitously throughout Cleveland, including the five wire centers identified by NDIA. And many customers prefer mobile broadband services. Nationally, approximately half (49.3 percent) of households have "cut the cord" and are wireless only for telephone service. Ohio outpaces the national average with 51 percent of households utilizing wireless services only. Among Lifeline customers (a program developed to assist low income customers), cord-cutting seems even more prevalent, with approximately 90 percent of those customers choosing wireless over wireline services.[2] Similar trends are developing with broadband. Indeed, in 2015, the Pew Research Center reported that smartphone utilization had reached parity with home broadband use (which had plateaued), with the rise in "smartphone-only" adults especially pronounced among low-income households (defined as those with annual incomes of $20,000 or less) and rural adults.[3] Now that every major wireless provider offers unlimited data plans, mobile broadband will presumably become even more attractive as mobile data prices continue to drop.

---

[1] "AT&T's Digital Redlining" (rel. Mar. 10, 2017), available at https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/ (last checked Apr. 30, 2017) (NDIA Report).

[2] http://usac.org/li/about/process-overview/stats/total-support.aspx (last checked (May 3, 2017).

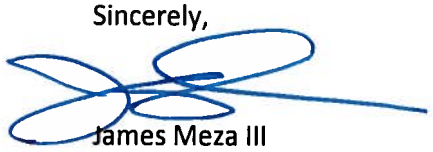
[3] http://www.pewinternet.org/2015/12/21/home-broadband-2015/ (last checked 5/1/17).

We also disagree with any suggestion that we have violated any law or regulation in connection with AT&T's wireline broadband deployment in Cleveland. Although you reference Section 1981 of the Civil Rights Act, 42 U.S.C. § 1981, that provision prohibits racial discrimination in entering and enforcing contracts. As discussed above, AT&T's decisions related to wireline broadband deployment in Cleveland consider neither the income nor the race of current and potential customers, much less discriminate on that basis. Therefore, your letter asserts no colorable § 1981 claim.

Likewise, you question whether NDIA's allegations trigger an obligation on the part of the FCC or the Public Utilities Commission of Ohio under section 706 of the Federal Communications Act to "restrain AT&T from continuing to redline." Section 706, however, focuses on the deployment of broadband services generally to all Americans – not the deployment of a particular broadband service (or by a particular broadband provider) to consumers in a particular geographic area. Insofar as at least 93 percent of the households served by the Cleveland wire centers identified by NDIA have access to cable broadband services at speeds of 50Mbps or higher, and all such households have access to multiple mobile broadband networks, your reference to section 706 is misplaced, as the objective of that section already has been met.

I trust that this response addresses your concerns. If you have any questions, please do not hesitate to contact me.

Sincerely,



James Meza III

PC PARKS CRUMP
ATTORNEYS AT LAW
A LIMITED LIABILITY COMPANY

By Courier Service

May 23, 2017

Randall Stephenson
Chairman, CEO and President
AT&T
208 S. Akard Street
Dallas, TX 75202

Stacey Maris
Senior Vice President and Secretary
AT&T
208 S. Akard Street, Suite 3241
Dallas, TX 75202

James Meza III
Senior Vice President and Assistant General Counsel
AT&T
2260 East Imperial Highway
El Segundo, CA 90245

Dear Mr. Stephenson, Ms. Maris and Mr. Meza:

Re: Redlining

On behalf of Cleveland Broadband Consumers, I am responding to the May 5, 2017 letter of Mr. Meza ("Meza Letter"), which, on behalf of the AT&T Board of Directors, responded to my April 24, 2017 letter regarding broadband deployment in Cleveland, Ohio.

Among other things, the Meza Letter:

- Denies that AT&T's failure to provide state-of-the-art broadband to most of the predominately low-income (and African American) neighborhoods in Ohio's largest city constitutes redlining;

- Defines redlining in such a way that only an extreme racial bigot could ever be found to be redlining; and

- Interprets the principal civil rights statute in telecommunications – Section 706 of the 1996 Telecommunications Act – in a manner that would render the statute completely impotent.

240 N. Magnolia Drive
Tallahassee, FL 32301
v 850 222 3333
f 850 224 6679
w ParksCrump.com

Since these positions were presented as representing the views of the AT&T Board of Directors, I am asking that my response to this letter be circulated to the Board members for their review.

For ease of reference, I am setting out each of the principal assertions in the Meza Letter and providing comments and questions, the answers to which may highlight the genuine differences of position that will constitute triable issues.

1. *Over the past five years alone, we have invested $135 billion in our wired and wireless broadband networks – more than any other public company in any industry in the United States – to allow Americans of all income levels the opportunity to enjoy all that the internet offers....[w]e invested more than $1.4 billion in our Ohio networks over the past three years, and $200 million in Cleveland specifically....we are continuing to implement our plan to deploy fiber-to-the premises to at least 12.5 million mass market customer locations in our wireline footprint by 2019...*

   We also are participating in the FCC's Connect America Fund program to extend our reach as we continue to invest in our world-class wireless network.

The amount of aggregate investment is irrelevant to discrimination in the placement of investments. If you were the City of Ferguson, Missouri, would you open your defense in the Michael Brown case by saying "we spent $135 million on our Police Department last year?"

You then refer to the Connect America Fund program, which you state will "*extend our reach as we continue to invest in our world-class wireless network.*" Connect America is a rural program. Cuyahoga County is urban.

2. *Further, we are experimenting with new technologies (including fixed wireless, 5G wireless, and other new technologies) to bring even more high-speed broadband connections to consumers across our footprint.*

This assertion raises these questions, and I would appreciate a response:

First, will the deployment of these technologies fully cure the disparities evident in the NDIA/Cleveland study? If so, how will that happen, and how long would that take? In the interim, will the underserved customers be made whole for their loss of digital opportunity?

Second, as these new technologies are being deployed, will the maps and criteria for their deployment schedule resemble the maps in the NDIA study and the criteria identified in the Meza Letter (*i.e., "the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations*") that yielded the patter of deployment reflected in the NDIA maps?

3. *Third, AT&T is engaged in a targeted effort to promote broadband adoption by low-income customers, We call it "Access from AT&T," and it features low monthly rates for the fastest*

of five wireline broadband services available to eligible participants – 10Mbps and 5Mbps for $10 per month, and 3Mbps, 1.5Mbps or 768kbps for $5 per month. We also waive credit checks and installation and equipment fees for participating households. We have partnered with national, state and local groups across the country (including in Cleveland) to educate potential participants regarding this program. And we have joined with the U.S. Department of Housing and Urban Development's Connect Home initiative to help connect families living in HUD-assisted housing to low cost Internet service.

A threshold question: please clarify whether consumers not reached with fast broadband are given all four options: 10Mbps, 5 Mbps, 3Mbps, and 768Kbps (all downstream).

None of these options comes close to meeting the FCC's 2015 definition of broadband (25Mbps down, 3Mbps up). It is especially surprising that AT&T takes pride in offering some Cleveland consumers 768Kbps for $5.00. Suppose a child is assigned to download and watch CBS' 1968 documentary "Hunger in America", which is 51:24 in length and can be found at https://www.youtube.com/watch?v=h9-4bq-4JfMAA. The file, which is provided in MP4 format, is 261,215 KB at 480P (progressive scan). Downloading with https://clipgrab.org/ at 768Kbps will take approximately 2,721 seconds or 45.35 minutes – almost as long as the program itself.

This third-class "offering" is reminiscent of municipalities that used to (and sometimes still do) contract out for inferior ambulance service, inferior water, and inferior electric service to "serve" the poor. Soon the use of these "services" becomes routinized. This is how geographic segregation replicates poverty across generations.

4. *[W]e do not engage in so-called digital redlining. Your allegations rely on a study by the National Digital Inclusion Alliance (NDIA), which purports to find evidence of redlining based on a an analysis of AT&T's wireline broadband deployment in only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint). This study is flawed and its conclusions are specious. AT&T's investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. Many factors are considered in this analysis. They included the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do not include household income, race or ethnicity; those considerations simply are not part of our analysis [fn. Omitted].*

You state that the NDIA study finds redlining "ion only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint)." Thus you are implying that the deployment pattern in Cleveland is *sui generis* and that similar patterns would not manifest themselves in other cities, such as Akron, Toledo, Dayton, Columbus and Cincinnati and other cities and their wire centers among the :250 in Ohio and 4,600 across our footprint" including California. Since you squarely raised this point, I trust you would be willing to provide the documentation to prove it.

I will address the issue of discriminatory intent below (*see* ¶7).

5. *Indeed, nothing in the NDIA study demonstrates otherwise. The five Cleveland wire centers on which NDIA hinges its analysis do not paint a complete or accurate portrait of our broadband offerings in Cleveland or elsewhere in Ohio. Across Ohio, including the Cleveland area, there are higher income areas to which AT&T currently can provide only lower speed wireline broadband services, and there are lower income areas to which we currently offer higher speed services. Indeed, looking at AT&T's deployment of wireline broadband across its entire Ohio footprint reveals that the proportion of customers with access to AT&T's higher speed wireline broadband services (18Mbps and faster) and lower speed services (6Mbps or slower) is roughly comparable, regardless whether households are below the poverty line or not.*

Of course NDIA did not find that every single wealthy neighborhood was served, and every single low-income neighborhood was not served. Such a "less than perfect" or "100 to zero" disparity never defeats a civil rights case. Even in the infamous racial gerrymandering case, *Gomillion v. Lightfoot,* 364 U.S. 339 (1960), at least four African American voters lived within the 28-sided borders of the City of Tuskegee after it was gerrymandered.

Due primarily to issues of terrain and density, rural broadband deployment cannot be compared with urban deployment. This lack of comparability is evident in the Benton Foundation's interactive map showing populations and densities, as of 2013 – https://www.benton.org/blog/what-section-706-means-net-neutrality-municipal-networks-and-universal-broadband. The map illustrates that Cuyahoga County, being entirely urban, generally had fixed 25Mbps/3Mbps available, whereas most of Ohio, being rural, did not have these broadband speeds available.

6. *NDIA's study is flawed in other respects as well. Among other things, it ignores AT&T's deployment of, and consumer demand for, mobile broadband services. AT&T's LTE mobile broadband network and services are available ubiquitously throughout Cleveland, including the five wire centers identified by NDIA. And many customers prefer mobile broadband services. Nationally approximately half (49.3 percent) of households have "cut the cord" and are wireless only for telephone service. Ohio outpaces the national average with 51 percent of households utilizing wireless services only. Among Lifeline customers (a program developed to assist low income customers), cord-cutting seems even more prevalent with approximately 90 percent of those customers choosing wireless over wireline services. Similar trends are developing with broadband. Indeed, in 2015, the Pew Research Center reported that smartphone utilization had reached parity with home broadband use (which had plateaued), with the rise in the "smartphone-only" adults especially pronounced among low-income households (defined as those with annual incomes of $20,000 or less) and rural adults. Now that every major wireless provider offers unlimited data plans, mobile broadband will presumably become even more attractive as mobile data prices continue to drop [fns. omitted].*

People of color have led the way in adoption of mobile broadband. Recognizing this, AT&T has championed mobile broadband while also encouraging fast, affordable, *home* broadband adoption because of its importance in advancing education, health care, employment and civic engagement.

Thus, it is a surprise that AT&T now believes that low income consumers' uptake of mobile broadband excuses AT&T's failure to provide equal access to first class fast home broadband service.

7. *We also disagree with any suggestion that we have violated any law or regulation in connection with AT&T's wireline broadband deployment in Cleveland. Although you reference Section 1981 of the Civil Rights Act, 42 U.S.C. § 1981, that provision prohibits racial discrimination in entering and enforcing contracts. As discussed above, AT&T's decisions related to wireline broadband deployment in Cleveland consider neither the income nor the race of current and potential customers, much less discriminate on that basis. Therefore, your letter asserts no colorable §1981 claim.*

Although intent is an element of a Section 1981 claim (see General Bldg. Contractors Ass'n. v. Pa., U.S. 375 (1982)), we do not expect it will be difficult to persuade a Cleveland jury to infer intent from the rather stark facts. As you know, a facially neutral decision rule is often struck down where the resulting patter is unexplainable unless race had been a material factor. Courts often consider cases involving civil rights statutes with intent requirements, and infer discriminatory intent where the statistical and other evidence cannot be explained away by the pretextual justifications of the defendant. This drawing of inferences commonly arises in litigation under the Voting Rights Act. For example, in *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016), *cert denied*, 581 U.S. _____ (2017), the 4th Circuit overturned parts of North Carolina's highly restrictive 2013 voting law, noting that the provisions "target African Americans with almost surgical precision" and" impose cures for problems that did not exist."

No jury that's paying attention is going to find that it was just an accident that in Cleveland – and Toledo, and Dayton, and Cincinnati, and Columbus, and Detroit – and California – your use of every conceivable metric *except* race and income just happened to yield maps that exclude low income African American neighborhoods everywhere with almost surgical precision.

Finally, to the extent that AT&T collaborated with housing developers to install its service in residential housing, your activities are subject to the Fair Housing Act (FHA). As you know, disparate *impact* claims are cognizable under the FHA. *Texas Dpt. Housing & Cmty Affairs v. Inclusive Communities Project,* 576 U.S. ____, 135 S.Ct. 2507, No. 13-1371, (decided June 25, 2015) (slip op., p. 2513). It will be difficult for you to avoid a disparate impact finding given that the Chairman of the FCC, in a March 15, 2017 address at Carnegie Mellon University, characterized the NDIA study as finding that "fiber was much less likely to be deployed in the low-income neighborhoods."

8. *Likewise, you question whether NDIA's allegations trigger an obligation on the part of the FCC or the Public Utilities Commission of Ohio under section 706 of the Federal Communications Act to "restrain AT&T from continuing to redline." Section 706, however, focuses on the deployment of broadband services generally to all Americans – not the deployment of a particular broadband service (or by a particular broadband provider) to consumers in a particular geographic area. Insofar as at least 93 percent of the households served by the Cleveland wire centers identified by NDIA have access to*

cable broadband services at speeds of 50Mbps or higher, and all such households have access to multiple mobile broadband networks, your reference to section 706 is misplaced, as the objective of that section already has been met.

You maintain that Section 706 provides no protection to consumers beyond ensuring that most (93 % is your number) consumers have one service of 50Mbps or higher (again, your number). Thus, by your reasoning, if Comcast does not redline, it matters not that AT&T does. Further, by your reasoning, Section 706 would provide no protection from redlining by AT&T as long as (most of) the poor have *one* fast broadband service to choose from. By your reasoning, the poor are not entitled to broadband competition. AT&T's current reading of Section 706 is on all fours with a contention that the protection afforded by the public accommodations section of the 1964 Civil Rights Act (42 U.S.C. §200a) reaches only one restaurant: as long as we can eat McDonald's, the Denny's next door can refuse us service.

Finally, it almost goes without saying that you are prohibited from redlining by Section 202 of the Communications Act, unless the Commission repeals that coverage retroactively and the courts uphold such action.

*****

You evidently have decided not to meet with my team or to address our proposal to empanel a board committee to address the redlining issue. Consequently, unless given good reason not to proceed, within the next three weeks we will take the following steps:

1. We will certify our class;

2. We will bring a formal complaint at the FCC invoking, *inter alia*, Title II and Section 706; and

3. We will inform the nation's governors of the deployment patterns in Cleveland and California that the NDIA and U.C. Berkeley studies have established. In that way, the governors can better determine how to evaluate your qualifications to provide the emergency communications service to low-income communities that first responders in disasters such as Hurricanes Andrew, Katrina and Sandy have recognized as top priorities.

Sincerely,
Parks & Crump, LLC

Daryl D. Parks, Esquire
240 N. Magnolia Drive
Tallahassee, FL 32301

cc: AT&T Board of Directors:

James Meza III
Senior Vice President
and Asst. General Counsel

AT&T Services Inc.
2260 East Imperial Hwy.
El Segundo, CA 90245

T: 310-964-1454
james.meza@att.com

Licensed in TX & LA
CA Registered In-House Counsel

Mr. Daryl D. Parks, Esquire
Parks & Crump, LLC
240 North Magnolia Drive
Tallahassee, Florida 32301

VIA E-MAIL AND U.S. MAIL

June 12, 2017

Re: May 23, *2017 Letter Regarding Broadband Deployment in Cleveland, Ohio*

Dear Mr. Parks:

Thank you for your response to my May 5, 2017 letter, regarding your allegations of digital redlining in Cleveland. At the outset, I wish to emphasize that AT&T shares your goal of bringing high speed broadband as quickly as possible to underserved communities in both rural and urban areas. AT&T has a well-recognized, longstanding commitment to inclusion and diversity. Accordingly, I invite you and members of your team to meet in person with senior executives in our external affairs and legal organizations to discuss this matter. I am hopeful that direct discussion would be productive for both sides.

While we respect your concerns, there is no legal or factual basis to assert that AT&T is engaged in unlawful redlining or has violated civil rights statutes, such as 42 U.S.C. § 1981. Section 1981 requires a showing of racial animus or intentional discrimination. Neither is present here. As we have stated, we base our investment decisions on neutral and legitimate business considerations. For that reason, you could not establish a Section 1981 violation by attempting to show that our neutral broadband deployment policies had a disparate impact on different racial groups.

Furthermore, Section 1981 applies only to conduct associated with services that are already being supplied and not the types of investment decisions that your letter addresses. *See* 42 U.S.C. § 1981 (applicable to "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship."). Thus, a plaintiff must show that he or she "has or would have rights under the existing or proposed contractual relationship," *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006), which the Sixth Circuit has emphasized applies only to "services ordinarily provided by the defendant." *Christian v. Wal-Mart Stores, Inc.*, 252 F.3d 862, 872 (6th Cir.), *opinion supplemented on denial of*

reh'g, 266 F.3d 407 (6th Cir. 2001). Because AT&T offers services supported by the infrastructure that it has in place without regard to membership in a protected class, all similarly situated persons are entitled to receive the same contractual rights.

Section 1981 does not require service providers to provide *additional* services or to change the nature or scope of their service offerings. Just as the statute does not require retailers to open additional stores or change their product offerings, neither does it require service providers like AT&T to make additional infrastructure investments to offer different services or to provide them in new locations. *See Chapman v. YMCA of Greater Buffalo*, 161 F.R.D. 21, 24 (W.D.N.Y. 1995).

Although we are confident that AT&T's broadband deployment in Cleveland and elsewhere is fully consistent with all legal requirements and with our own commitments to inclusion and diversity, we would welcome the opportunity to engage further with you on how we can even better serve the communities in which we operate. I look forward to hearing from you regarding the meeting I have proposed.

Sincerely,

James Meza III

PARKSCRUMP
ATTORNEYS AT LAW
A LIMITED LIABILITY COMPANY

By Courier Service

July 24, 2017

Randall Stephenson
Chairman, CEO and President
AT&T
208 S. Akard Street
Dallas, TX 75202

Stacey Maris
Senior Vice President and Secretary
AT&T
208 S. Akard Street, Suite 3241
Dallas, TX 75202

James Meza III
Senior Vice President and Assistant General Counsel
AT&T
2260 East Imperial Highway
El Segundo, CA 90245

Robert Quinn
Senior Vice President, External and Legislative Affairs
AT&T
1120 18th Street, NW
Washington, DC 20036

Dear Mr. Stephenson, Ms. Maris, Mr. Meza and Mr. Robert Quinn:

Re: Redlining

On behalf of Cleveland Broadband Consumers, I am writing to illuminate a key issue we would like to address in the wake of the meeting with Mr. Quinn and his team at 9:30 AM this past Friday, July 21, 2017. Inasmuch as this issue goes to the basic reliability of the company's most fundamental communications with the FCC and with its key stakeholders, it ought to be addressed at the governance level of the company. Consequently and respectfully, I am renewing my April 24, 2017 request for a meeting with Mr. Stephenson. Further, as a stakeholder, I am asking the board for an opportunity to address this issue at its next meeting.

In your earlier correspondence to me, and in the July 21 meeting, the company attempted either to justify or explain the stark disparities in fast broadband deployment in Cleveland on grounds of race-neutrality and income-neutrality. Mr. Meza's May 5, 2017 letter to me state that:

240 N. Magnolia Drive
Tallahassee, FL 32301
v 850 222 3333
f 850 224 6679
w ParksCrump.com

> AT&T's investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. May factors are considered in this analysis. They include the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do *not* include household income, race or ethnicity; those considerations simply are not part of our analysis.

Amplifying on this issue at our July 21 meeting, Mr. Quinn was surprisingly combative, saying "I'm a litigator too, and not as diplomatic as my predecessor" making it clear that he was looking for a fight. Mr. Quinn went so far as to characterize the NDIA-documented service disparities as strictly an economic issue – "non-service" (!) based entirely on cost and demand – and thus justified as long as after 45 minutes of the 1-½ hour scheduled meeting. I did not find this Donald Trump-like, "my way or the highway" approach conducive to working with stakeholders to solve problems.

We do not agree that "non-service" to mostly minority, impoverished neighborhoods is not redlining. Among other things, "demand forecast modeling" often translates as disposable income or wealth. Wealth is virtually a proxy for race, given that the wealth gap is at least 13:1 according to Pew, Brandeis and others.

Moreover, from the vantage point of the "non-served", it matters not whether racial animus or "demand forecast modeling" leaves them last in line to cross the digital divide.

Still, let's assume for the sake of argument that your claim of race- and income-neutrality is valid. *Why, then, did AT&T not disclose in 2007-2010 to the FCC, and to its civil rights organization stakeholders and supporters in the net neutrality debates, that you planned to roll out fast broadband along the lines of the Cleveland NDIA map?* If you had "neutral" reasons for your rollout schedule, couldn't you have explained that? Why did AT&T instead withhold its rollout plans and maps, only to have NDIA assemble and release them? Can you see how this lack of transparency created the appearance that you had something to hide?

Indeed, your public advocacy, specifically during the years when you were planning and deploying broadband in cities like Cleveland, created the clear impression that you intended to deploy ubiquitously. In your 2007 Broadband Industry Practices Reply Comments,[1] you stated that:

> [E]mpirical studies show that, each time the government has *relaxed* regulatory burdens on wireline broadband providers, those providers have responded by expanding their networks and dropping their prices. That is why the commenters most concerned with closing the "digital divide" – with extending the benefits of broadband to rural and low-income communities – oppose net neutrality regulation. [p. 13; fns. omitted; citing comments p. 47 n. 152 that expressly connect light touch Internet regulation with deployment to inner city communities].[2]

Further, in your 2010 Open Internet Reply Comments, [3] you stated that:

[1] Reply Comments of AT&T Inc., Broadband Industry Practices, WC Docket No. 07-52 (filed July 16, 2007), available at https://ecfsapi.fcc.gov/file/6519558101.pdf (last visited July 17, 2017).

[2] Footnote 152 reads:

> LULAC Comments 1 ("While large numbers of Latios have enjoyed increased economic, educational and political opportunity with the click of a mouse, for a variety of reasons, others have not yet experienced the benefits of the Internet.... [W]e urge policymakers to cast a skeptical eye on proposed net regulations that could reduce the incentive to invest and, thereby, limit innovation and deployment to underserved communities."); Labor Council for Latin American Advancement Comments 1 ("[M]any of today's broadband providers are investing capital to increase broadband deployment.... Additional regulation of these providers, as advocated by supporters of 'net neutrality,' would actually inhibit their efforts, and thus slow the progress we so desperately would like to witness on behalf of our members and the Latino community. Net neutrality laws will take away the incentives these providers have to invest, and will leave Latinos specifically, and Americans overall with less access[.]"); Hispanic Technology & Telecommunications Partnership Comments 2 ("[N]o compelling reason currently exists to establish new regulations in addition to the FCC;s existing policy statement.... [We] encourage the Commission to seek policies that promote investment, development of new technologies, and the expansion of broadband services. If this happens we will be well on our way to eliminating the digital divide for Hispanics and all underserved Americans."); *see also Hermalin and Katz, supra,* at 2 [Benjamin E. Hermalin & Michael L. Katz, *The Economics of Product-Line Restrictions with an Application to the Network Neutrality Debate,* Competition Policy Center, at 2 (2006) (http://repositories.cdlib.org/iber/cpc/CPC06-059)] ("consumers at the bottom of the market-the ones that single- product restrictions typically are intended to aid-are almost always harmed by the restriction" on differentiation among product lines)."

[3] Reply Comments of AT&T Inc., Preserving the Open Internet, GN Docket No. 09-191 *et al.* (filed April 26, 2010), available at https://ecfaspi.fcc.gov/file/7020437381.pdf (last visited July 17, 2017).

[C]alls for net neutrality regulation are an unfortunate distraction from the important work that remains to be done in bringing ultra-fast next-generation Internet service to all Americans (p.1) ...

And [many parties] rightly caution the Commission about the unintended consequences of such rules, such as hindering broadband investment and innovation, widening the digital divide, ceding U.S. leadership in Internet technology, depressing job creation and economic growth, and increasing security risks for networks and consumers.

The voices in this emerging consensus include not only AT&T and hundreds of other broadband network operators-ranging from cable companies to CLECs like Covad, to rural ILECs like the members of NECA, to international providers like Telefonica-but also:

- Civil rights groups such as the NAACP and LULAC (pp.2-3), citing, in n. 2, a letter from a leader of the NAACP and a commentary from the Executive Director of LULAC, as well as an op-ed by Navarrow Wright, Who Pays the Price for Net Neutrality?, Huffington Post, Jan. 18, 2010, available at http://www.huffingtonpost.com/navarrow-wright/who-pays-the-price-for-ne_b_427500.html last visited July 17, 2017) ("When I read the blogs and filings of groups like Free Press and Public Knowledge, I wonder who they really represent.... The FCC is playing a dangerous game here, and *the people who have the most to lose are already the socially and economically disenfranchised members of our national community-low-income, rural, urban, non-English speaking, tribal, minority ... and underserved populations")* (emphasis supplied).

Anyone reading this would never imagine that AT&T's actual deployment plans omitted minority communities in Cleveland and other major cities. Certainly any carrier planning to spend billions of dollars deploying broadband would have known years in advance where it was going to roll out its service first – and last. Had AT&T disclosed in 207 or 2010 that its actual plans were to deploy by 2017 along the lines of the NDIA Cleveland maps, the civil rights organizations, as well as the FCC, certainly would have asked for clear assurances that such deployment would have been rare, temporary, and not tainted with the breath of the conscious or unconscious racial animus that unfortunately can linger in the corridors of even the most well intentioned companies.

By *not* having disclosed your actual plans in 2007 and 2010, you created the current dilemma. I am certain civil rights leaders wish you had told them, years ago, that you didn't intend to deploy with dispatch in their constituents' communities, where the need was greatest. But they trusted you. They could have handled the news.

Not having told the FCC is quite another matter. The FCC expects its regulatees to place on the record all material facts. It knows nothing of demurrers. Asking the FCC to impose only light-touch regulation because it would help close the digital divide certainly makes a company's plans *not* to close the digital divide in deployment highly relevant, irrespective of whether such a plan is or isn't "redlining" as we say it is, or whether it is or is not "illegal" as we say it is. This conscious nondisclosure was a classic "material omission," and the Commission will have to decide how to address it.[4]

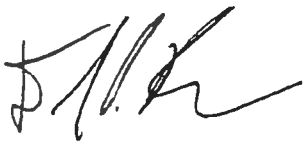
I do not want to take up Mr. Stephenson's time debating what went wrong. We will never agree on that. Instead, we should focus on what's going to happen when 5G is rolled out and FirstNet. Why should the governors of our country allow AT&T to build out the greatest communication highway in the world, with taxpayers' dollars, when you are redlining against the nation's most vulnerable populations? The answer is easy, they should not. FirstNet is an honor you do not deserve until you eliminate your redlining practices.

These are questions of planning and communication, which reasonable people can resolve even while they disagree on the law. But in the wake of Mr. Quinn's well informed but belligerent presentation, it's clear that AT&T should be addressing this subject as one of governance as well as one of law and policy.

*****

So that we may share this letter with the members of the AT&T Board of Directors, please transmit the letter to each director via internal AT&T mail to ensure that it is properly and immediately received.

Sincerely,
Parks & Crump, LLC



Daryl D. Parks, Esquire
240 N. Magnolia Drive
Tallahassee, FL 32301

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[4] Resolving different holdings by circuit courts of appeals, the Supreme Court recently held unanimously, that material omissions can be treated the same as misrepresentations. When the defendant "omits its violations of statutory, regulatory, or contractual requirements, those omissions can be basis for liability if they "render the defendant's representations misleading with respect to the goods or services provided." *Universal Health Services v. U.S.*, 136 U.S. 1989, 1999 (2016).

cc: AT&T Board of Directors:

- Samuel DiPiazza
- Richard Fisher
- Scott Ford
- Jimmy Hayes
- Glenn Hutchins
- William Kennard
- Joe Madonna
- Michael McAllister
- John McCoy
- Beth Mooney
- Joy Roche
- Matthew Rose
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- Clifford A. Rosenberger, Speaker of the House
- House of Representatives, The Ohio Legislature
- Larry Obhof, Senate President, The Ohio Legislature
- Fred Strahorn, Minority Leader, House of Representatives, The Ohio Legislature
- Joseph Schiavoni, Minority Leader, Senate, The Ohio Legislature

Robert W. Quinn, Jr
Senior Executive Vice President
External & legislative Affairs

AT&T Services, Inc.
1120 20th Street NW
Suite 1000
Washington, DC 20036

T 202.457.3851
rwquinn@att.com

August 3, 2017

Mr. Daryl Parks, Esquire
Parks & Crump, LLC
240 N. Magnolia Drive
Tallahassee, FL 32301

Dear Mr. Parks,

I am in receipt of your letter dated July 24, 2017 addressed to Randall Stephenson, Jim Meza, Stacy Maris and me. Let me start by stating that, as requested, we shared and discussed your letter with Mr. Stephenson and our Board of Directors at our regularly scheduled July Board meeting last week. Let me also state that I am sorry you perceived me to be belligerent or combative during the meeting. I can assure you that it was not my intent to pick a fight with you, but rather to get us on the path of resolving the concerns you have expressed in your letters on this subject. I had only wished to convey that we believe your legal allegations concerning redlining are not supported by the facts of this case or law. If in conveying our side of that case, I did that in a manner you perceived as aggressive or disrespectful, I sincerely apologize. The entire purpose of the meeting was to seek to find some common ground upon which we could work together to pursue our mutual goal to ensure that the benefits of broadband are received across all socio-economic groups. I am hopeful we can continue that aspect of our discussion.

As I explained in the meeting, AT&T does not redline. We do not take race, ethnicity, or income into account in determining whether a specific broadband technology can be deployed in a given area. I also highlighted that we seek out any efficient access technology to deliver broadband to our consumers. As we move into a 5G mobile world, we will use that technology to expand the availability of bigger and faster broadband, particularly in areas where the economics of fiber are prohibitive I had hoped that expansion of our mobile broadband technology could provide the basis for addressing some of the issues raised in your letters, particularly because research suggests that fixed home broadband adoption rates have plateaued while mobile broadband reliance continues to grow. One of the main problems with the NDIA study you have referenced is that it ignores the wireless infrastructure which AT&T has deployed ubiquitously in Ohio, including in the five wire centers that are highlighted in the NDIA study.

We truly believe wireless technology will help us to achieve our common goals. I believe we can engage in a productive and cordial discussion regarding how to pursue an agenda to upgrade that wireless infrastructure, including deploying small cell technology in those wire centers as we begin moving down the path towards 5G. I would like to continue that dialog as I thought we agreed to do at our meeting. I will contact you again early next week to see if you are willing to begin those discussions.

Sincerely,

Robert W. Quinn Jr.

Washington

Aug 24, 2017 09:24 AM ET

Broadband Redlining Complaint Filed Against AT&T at FCC

Seeks hearing, investigation, damages; AT&T has said it does not redline, period

(http://www.broadcastingcable.com/users/jeggerton)By John Eggerton (/users/jeggerton)
(mailto:JEggerton@nbmedia.com) eggerton (https://twitter.com/eggerton)

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Attorney Daryl Parks has filed a formal **FCC (http://www.broadcastingcable.com/articles-taging/fcc)** complaint against **AT&T (http://www.broadcastingcable.com/articles-taging/att)** on behalf of three African American low-income residents of Cleveland alleging digital redlining.

The complainants—Joanne Elkins, Hattie Lanfair, and Rochelle Lee—allege that "wealthier and predominantly white areas have gotten premium upgradable high speed broadband access at bullet speed," while the three complainants "receive slow speeds at a rate as low as 1.5 mbps downstream or less, although they pay AT&T for high speed access."

They say that is unjust and unreasonable discrimination in violation of the Communications Act. They also allege that is part of a pattern of discrimination by AT&T nationwide, relying on a study by the National Digital Inclusion Alliance.

Related: Brazil Raises Antitrust Concerns With AT&T/Time Warner (http://www.broadcastingcable.com/news/washington/brazil-raises-antitrust-concerns-atttime-warner/168060)

The parties say they met with AT&T in July, which "flatly" denies that it is redlining, hence the suit. The complaint concedes AT&T offered to expand a 5G wireless broadband pilot program, but says that is not sufficient.

The FCC's definition of high-speed broadband is 4 Mbps downstream.

SEE ALSO:

Get Those EAS Test Forms In, Advises Law Firm

(/news/washington/get-those-eas-test-forms-advises-law-firm/168099)

Parks and company want the FCC to investigate the charge, including holding a hearing, which would likely be before the FCC's Administrative Law Judge, and they want damages.

Related: AT&T Mulling Sale of Digital Life: Report (http://www.broadcastingcable.com/news/currency/att-mulling-sale-digital-life-report/168024)

The complaint is being hand-delivered to the FCC, according to Parks.

Back in May, the broadband access advocates at the National Digital Inclusion Alliance (NDIA) **alleged that AT&T has discriminated (http://www.multichannel.com/news/broadband/att-accused-digital-red-lining-cleveland/411436)** against low-income Cleveland neighborhoods in deployment of home internet and video over a decade.

It said it was basing that "digital redlining" charge on FCC data from June 2016, as well as "city construction permits and other information" that it says shows the company "withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates – including Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others."

Related: AT&T Loses Challenge to Louisville 'One Touch' Ordinance (http://www.broadcastingcable.com/news/washington/att-loses-challenge-louisville-one-touch-ordinance/167948)

NDIA said it began the six-month mapping analysis after some residents were being told they were ineligible for a discount rate program because they were not getting the minimum 3 Mbps speed needed for the discount.

"The report does not accurately reflect the investment we've made in bringing faster internet to urban and rural areas across the U.S.," said an AT&T spokesperson at the time. "While we are investing in broadband, we're also investing in technologies that will mitigate some of the infrastructure limitations."

An AT&T source speaking on background said that the company had invested $135 billion on wired and wireless networks between 2012 and 2016, including nearly $1.5 billion in its Ohio wireless and wired networks in 2013-2015, with more than $325 million of that in Cleveland.

Two weeks later Parks, unpersuaded by AT&T, pledged a multi-front campaign against the telco and on behalf of Cleveland low-income residents. Parks, who gained national prominence as the attorney for the families of Trayvon Martin and Michael Brown, was denied a request to speak at an AT&T board meeting about the issue.

"[In] the near future," he said back in May, he planned to certify a class-action suit, bring a formal redlining complaint at the FCC, and "raise with the nation's governors the issue of AT&T's suitability to manage the emergency communications service FirstNet." That is the interoperable communications network AT&T has a multibillion-dollar government grant to provide and manage.

James Meza, AT&T senior VP and assistant general counsel, said i**n a letter to Parks in response (http://www.multichannel.com/news/telco-tv/attorney-pledges-multi-front-campaign-against-att/413058)** that the company takes the complaint seriously, has invested $135 billion over the past five years to ensure "Americans of all income levels" can get internet service, will continue to expand its Ohio networks, and is promoting broadband adoption by low-income customers.

"We do not redline," AT&T regulatory and state external affairs executive VP Joan Marsh reiterated Wednesday following the complaint's filing. "Our commitment to diversity and inclusion is unparalleled. Our investment decisions are based on the cost of deployment and demand for our services and are of course fully compliant with the requirements of the Communications Act. We will vigorously defend the complaint filed today."

*(***(http://www.multichannel.com/news/distribution/straight-path-board-says-rival-bid-superior-att-s/412691)*Photo via (http://www.multichannel.com/news/content/att-ties-25-video-credit-unlimited-wireless-plan/411169)Bill Bradford's Flickr (https://www.flickr.com/photos/mrbill/3316799523)*. Image taken on March 4, 2016 and used per **Creative Commons 2.0 license (http://creativecommons.org/licenses/by/4.0/)**. The photo was cropped to fit 16x9 aspect ratio.)*

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THE HILL

Civil rights lawyer accuses AT&T of discriminating against low-income communities

BY HARPER NEIDIG - 08/24/17 01:04 PM EDT 65

Civil rights attorney Daryl Parks filed a formal complaint with the Federal Communications Commission (FCC) Thursday on behalf of three black women who say that their Cleveland neighborhoods don't have access to the same broadband services as the surrounding suburbs.

The complaint cites a March report from the National Digital Inclusion Alliance (NDIA) and Connect Your Community (CYC), which showed stark disparities in the internet transmission technologies deployed in different areas in and around Cleveland.

The report concluded that "AT&T has systematically discriminated against lower-income Cleveland neighborhoods in its deployment of home Internet and video technologies over the past decade" — a practice that NDIA and CYC refer to as "digital redlining."

AT&T customers that live in Cleveland census blocks with high poverty rates are being serviced by an outdated transmission mode called asymmetric digital subscriber line 2, while Cuyahoga County suburbs and most urban areas in the rest of the country have access to more advanced fiber internet services, according to the report.
AT&T denied the allegations, saying that any disparity in internet speeds is the result of the company's financial considerations and not discrimination.

“We do not redline,” Joan Marsh, AT&T’s chief regulatory and external affairs officer, said in a statement to The Hill. “Our commitment to diversity and inclusion is unparalleled. Our investment decisions are based on the cost of deployment and demand for our services and are of course fully compliant with the requirements of the Communications Act. We will vigorously defend the complaint filed today.”

According to the complaint, a July meeting between Parks and AT&T executives ended in a “flat denial by AT&T that it is redlining.” Parks also said that the company is unwilling to engage in mediation and that the two sides were unable to reach a settlement.

Parks is known for having represented Trayvon Martin’s family after the black 17-year-old was shot and killed by George Zimmerman in 2012.

Parks’s three clients alleged that they experience extremely low download speeds despite paying for premium broadband access. One of the women, Joanne Elkins, said that she had spent $1,500 on a security system for her home only to find out that it was rendered useless by the slow internet service.

Parks wrote that AT&T has violated the Communications Act by “failing to serve the low-income, communities of color” in Cleveland and that the FCC should impose fines on the telecommunications giant.

A spokeswoman for FCC Chairman Ajit Pai declined to comment, citing a policy of not weighing in on pending adjudications.

The complaint also asks that AT&T disclose details about its marketing towards communities of color, demographics about its customers and information on its internet deployment operations.

http://thehill.com/policy/technology/347818-civil-rights-lawyer-accuses-att-of-discriminating-against-low-income

Ars Technica

AT&T’s slow 1.5Mbps Internet in poor neighborhoods sparks complaint to FCC

AT&T refusal to boost Internet speed violates discrimination ban, complaint says.

JON BRODKIN - 8/24/2017, 12:20 PM

AT&T is facing a complaint alleging that it discriminates against poor people by providing fast service in wealthier communities and speeds as low as 1.5Mbps in low-income neighborhoods.

The formal complaint filed today with the Federal Communications Commission says that AT&T is violating the Communications Act's prohibition against unjust and unreasonable discrimination. That ban is part of Title II, which is best known as the authority used by the FCC to impose net neutrality rules. But as we've explained before, Title II also contains important consumer protections that go beyond net neutrality, such as a ban on discrimination in rates, practices, and offerings of services.

"This complaint, brought by Joanne Elkins, Hattie Lanfair, and Rachelle Lee, three African-American, low-income residents of Cleveland, Ohio alleges that AT&T’s offerings of high-speed broadband service violate the Communications Act’s prohibition against unjust and unreasonable discrimination," the complaint says.

AT&T is not immune to the ban on discrimination "merely because its discrimination is based on investment decisions," the complaint also says.

Title II authority on chopping block

The FCC's Republican leadership has proposed removing the commission's Title II authority from broadband. But the complaint regarding AT&T's current behavior "should not be dismissed based on a future regulatory decision," the complaint says. The Cleveland residents also argue that the FCC can take action against AT&T under its Section 706 authority to promote broadband deployment. But unlike Title II, Section 706 doesn't explicitly ban discrimination.

A press release further describes the complainants' broadband problems:

> [T]he women receive slow speeds at a rate as low as 1.5Mbps downstream or less, although they pay AT&T for high-speed access; meanwhile residents in wealthier and predominantly white areas have gotten premium, upgradable high-speed broadband access at bullet speed comparatively.
>
> As a result of the ineffectual and substandard quality level of speed, the women's children cannot access homework sites, [and] their home security system[s] that rely on broadband connectivity [are] rendered useless.

Evidence of discrimination

The complaint's allegations are based partly on a study we wrote about in March. The study by advocacy groups analyzed FCC data and alleged that "AT&T has systematically discriminated against lower-income Cleveland neighborhoods in its deployment of home Internet and video technologies over the past decade." (Another study found a similar pattern in California.)

In Cleveland, AT&T has withheld its fiber-to-the-node infrastructure from "the overwhelming majority of census blocks with individual poverty rates above 35 percent," the complaint said. The study cited in the complaint is titled, "AT&T's Digital Redlining of Cleveland," and it was written by the National Digital Inclusion Alliance (NDIA) and a Cleveland-based group called Connect Your Community.

The complainants and AT&T have held settlement talks, but the two sides have not come to an agreement. "Defendant does not acknowledge its obligation to serve Complainants; therefore parties are sufficiently far apart that we seek Commission intervention in this dispute," the complaint says.

AT&T offered to deploy a 5G wireless service but not faster wired Internet, the complaint said.

Formal complaints to the FCC like this one require a filing fee of $225 and kick off a court-like proceeding in which the parties appear before the commission and file numerous documents to address legal issues. The complainants asked the FCC for monetary damages and an injunction prohibiting AT&T from continuing to engage in "discriminatory and anticompetitive conduct and practices."

We contacted AT&T about the complaint and will update this story if we get a response. After the "Digital Redlining" study was released in March, AT&T defended its network investment in Cleveland but did not dispute any of the advocacy groups' specific findings.

UPDATE: AT&T responded with a statement from Joan Marsh, executive vice president of regulatory and state external affairs, who said, "We do not redline. Our commitment to diversity and inclusion is unparalleled. Our investment decisions are based on the cost of deployment and demand for our services and are of course fully compliant with the requirements of the Communications Act. We will vigorously defend the complaint filed today."

JON BRODKIN Jon is Ars Technica's senior IT reporter, covering the FCC and broadband, telecommunications, wireless technology, and more.**EMAIL** jon.brodkin@arstechnica.com // **TWITTER** @JBrodkin

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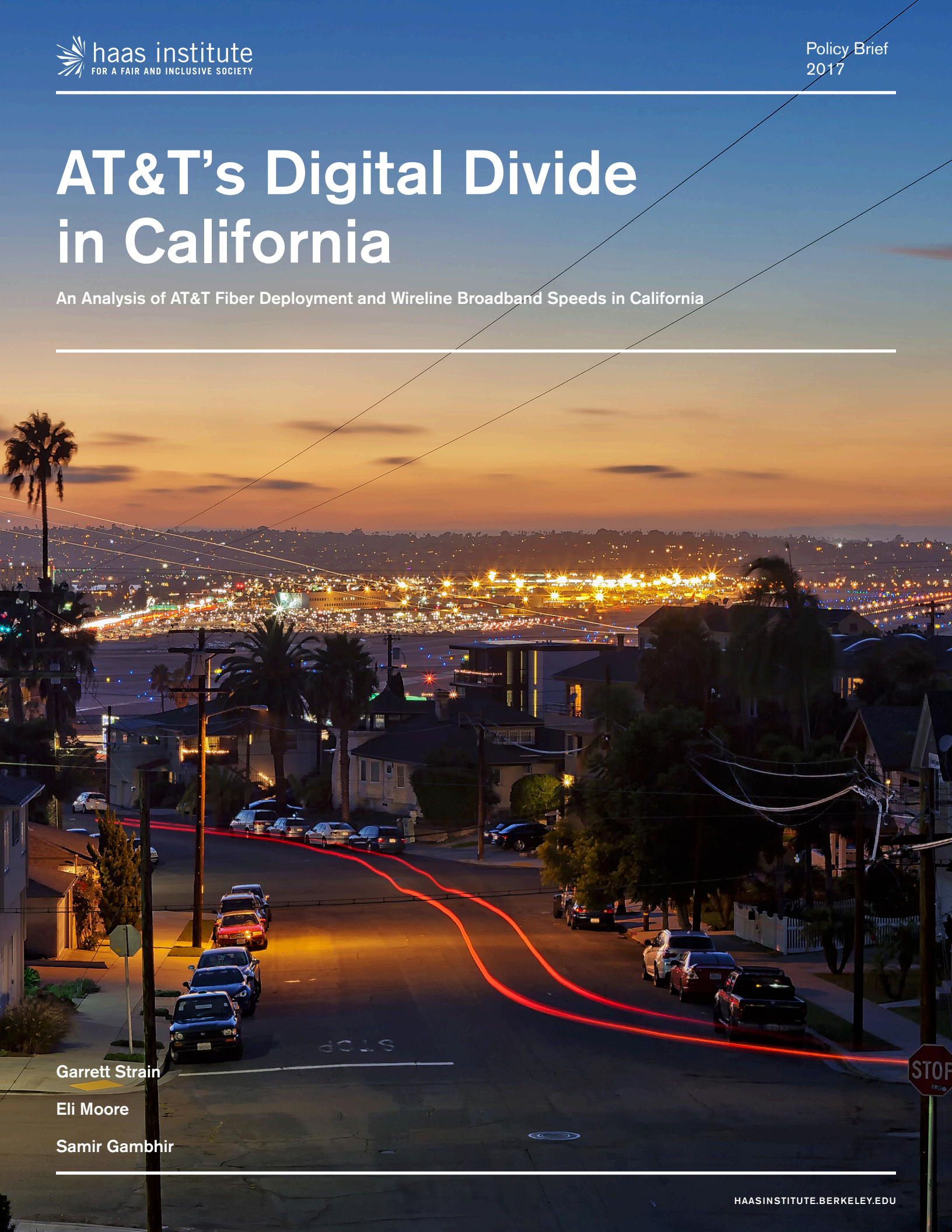
FOR A FAIR AND INCLUSIVE SOCIETY

Policy Brief
2017

AT&T's Digital Divide in California

An Analysis of AT&T Fiber Deployment and Wireline Broadband Speeds in California



Garrett Strain

Eli Moore

Samir Gambhir

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About the Authors

Garrett Strain
Strain is a Ph.D. student in Sociology at the University of California, Berkeley. His research focuses on labor, finance, and political economy. He holds a MPA and B.S. in Economics from the University of Washington.

Eli Moore
Moore is the California Community Partnerships Program Manager at the Haas Institute for a Fair and Inclusive Society. His research focuses on a broad range of equity and inclusion issues and policy areas. Eli holds a Bachelor's degree from University of California, Santa Cruz and dual Master's degrees from Syracuse University.

Samir Gambhir
Gambhir is a Geographic Information Systems (GIS) researcher and manager of the Equity Metrics program at the Haas Institute for a Fair and Inclusive Society. He has research experience in the areas of social justice, racial equity, planning, health, and business, with a focus on human geography. He graduated from The Ohio State University in 2003 with a Master's degree in City and Regional Planning.

Special Thanks

Thank you to Communications Workers of America District 9 for supporting this research

Report URL

http://haasinstitute.berkeley.edu/digitaldividecalifornia

Contents

Executive Summary

Californians need high-speed broadband—it is an essential conduit for opportunity, shaping access to education, employment, health services, and other spheres of life. Internet speed matters. More than half of all Internet traffic is now data-rich video, requiring higher capacity networks. All-fiber networks capable of delivering gigabit speeds have become the global standard for Internet connectivity.

With great fanfare, AT&T launched an initiative to build "GigaPower," fiber-to-the-home networks to 12.5 million customer locations across its 21-state wireline footprint. This report provides the first analysis of the income distribution of AT&T's initial fiber-to-the-home deployment in California. The analysis uses the most recent data (which presents data as of June 30, 2016) from the Federal Communications Commission (FCC) and correlates the FCC data with statistics on household income from the Census Bureau's American Community Survey.

The report also examines more generally AT&T's advertised wireline broadband services in California. The analysis covers households located within AT&T's California wireline footprint (i.e. households where AT&T California is an incumbent local exchange carrier). AT&T is the largest telecommunications carrier in California, with a landline network serving 70.8 percent of California households across 56 counties. AT&T is the largest telecommunications company in the United States, with revenue of $163.8 billion and profits of $13 billion in 2016.

The data reveals disturbing trends that will exacerbate the digital divide in California. First, AT&T's initial fiber-to-the-home deployment is disproportionately focused on high-income communities. Second, AT&T has left too many Californians stuck in the slow lane on the information highway, unable to participate fully in the expanding digital economy. Despite its large size and profitability, AT&T has fallen short of providing equitable access to high-speed broadband in California. The major findings from the June 2016 data are as follows:

AT&T's Initial Fiber-to-the-Home Network Deployment is Concentrated in High-Income Communities

- The median household income of California communities with access to AT&T's fiber-to-the-home (FTTH) network is $94,208. This exceeds by $32,297 the $61,911 median household income for all California households in the AT&T wireline footprint.
- In contrast, the median household income of California communities for whom the most advanced broadband technology available from AT&T is its slower U-verse fiber-to-the-neighborhood (FTTN) network is $67,021, which is $27,187 (28.9 percent) lower than the median household income of fiber-to-the-home households.

+ Approximately one-quarter (27.6 percent) of households– about 2.7 million households–in AT&T's California footprint are stuck with slow DSL. The median household income for California households for whom DSL is the most advanced broadband technology available from AT&T is $53,186, which is $41,022 (43.5 percent) lower than the median household income of fiber-to-the-home households.

Millions of Californians are Underserved by AT&T Broadband

+ **1.7 million households are underserved by AT&T.** The California Public Utilities Commission (CPUC) defines communities without access to broadband at a speed of at least 6 Megabits per second (Mbps) download/1.5 Mbps upload as underserved. A full 18.1 percent of California households in AT&T's wireline footprint–approximately 1.7 million households–lack access to AT&T broadband according to this definition.
+ **4.1 million households are without access to AT&T high-speed broadband.** The Federal Communications Commission (FCC) defines high-speed broadband as digital transmission at 25/3 Mbps download/upload. Based on this definition, 42.8 percent of California households in AT&T's wireline footprint, or approximately 4.1 million households,do not have access to AT&T broadband that meets the FCC's high-speed definition of 25/3 Mbps.
+ **Rural California is left behind by AT&T.** In 14 largely rural counties, virtually no household has access to AT&T broadband at the FCC's 25/3 Mbps speed and one-third or more households are underserved without access to AT&T broadband at 6/1.5 Mbps.
+ **Many urban and suburban Californians are stuck in AT&T's slow lane.** AT&T's slow speeds are not limited to rural areas. In Los Angeles county, for example, approximately 443,000 households (20.4 percent) in AT&T's wireline footprint lack access to AT&T broadband at 6/1 Mbps and approximately 1.1 million households (51.5 percent) lack access to AT&T broadband at 25/3 Mbps. In Santa Clara County, the heart of Silicon Valley, approximately 98,000 households (17.5 percent) are underserved by AT&T and approximately 176,000 lack access to AT&T broadband at 25/3 Mbps.

See Chart 1 page 12, Table 1 page 11, and Table 5 page 22 for this data.

Recommendations

Access to high-speed broadband is not a luxury, it is a necessity. Yet too many Californians are trapped on the wrong side of the digital divide. To remain a leader in high-tech innovation, California must do better. Public oversight and intervention is needed to ensure universal and affordable access to high-speed communications services. Policymakers must hold network carriers accountable to meet deployment benchmarks to ensure that essential services like high-speed broadband are provided in an affordable and equitable way.

Therefore, our recommendations are:

- **Policymakers and community leaders** should call on AT&T to accelerate investment in its wireline broadband network in California, expanding deployment of its all-fiber network to more communities on an equitable basis, and ensuring that everyone in its wireline footprint has access to a high-speed broadband connection.
- **Policymakers and community leaders** should call on AT&T to make available to the public its fiber deployment plans: where it plans to deploy fiber, the timeline for the deployment, the number of households that will be served by fiber, internal measures to ensure equitable access to diverse, low-income communities, and network investment plans in rural and other areas.
- **The California legislature** should reassert public authority over broadband network deployment by repealing SB1161, which places some limits on such public oversight, and should adopt legislation that establishes enforceable fiber deployment benchmarks that apply to all providers.
- **The California Public Utilities Commission** should convene public hearings in 2017 across the state on the availability of high-speed broadband in order to inform its 2018 report on the state of broadband in California. It should also continue to require broadband carriers to provide accurate information on broadband deployment by speed, technology, and customer types at a granular Census Block level and audit such data for accuracy; Lastly, it should publish and make available to the public statutorily-mandated reports in a timely manner.

Introduction

CALIFORNIA IS A LEADER in digital innovation and technology, yet too many California residents are stuck in the slow lane on the information highway, with few competitive options for high-speed broadband. In this report, we focus on broadband availability from AT&T California because it is the largest legacy telephone company in the state, reaching 70.8 percent of California households–approximately 9.7 million households–across its wireline network in 56 counties. AT&T is also the largest telecommunications company in the nation, with revenue of $163.8 billion and profits of $13 billion in 2016.[1]

How AT&T invests in upgrading its wireline network to meet California consumers' demand for high-capacity broadband will have far-reaching consequences for access to opportunity for individual Californians and the state as a whole. It will also have a significant impact on economic growth, job creation, and job quality. Network investment drives job growth at AT&T, which employs more than 17,000 union-represented technicians and customer service workers in California who earn family-supporting wages and benefits. Moreover, high-capacity broadband networks create a "virtuous cycle" of innovation leading to the development of new online applications and services, driving economic growth and job creation throughout the California economy. Academic studies have found that broadband expansion drives local economic growth and households that use the Internet have better employment outcomes than those who do not.[2]

The Digital Divide in California

Rural Broadband Gap

Only 43 percent of rural households have access to reliable broadband service.

Competition/Speed Gap

Only 36.2 percent of California households have more than one choice for a high-speed broadband provider (at 25/3 Mbps).

Adoption/Affordability Gap

Only 43 percent of low-income households subscribe to wireline broadband at home compared to 94 percent of high-income.

Only 56 percent of Latinos, 68 percent of Asian Americans, and 66 percent of African Americans subscribe to wireline broadband at home compared to 83 percent of non-Hispanic whites.

1 AT&T Press Release, "AT&T Reports 4th Quarter and Full-Year Results," Jan. 25, 2017 (available at http://about.att.com/story/att_fourth_quarter_earnings_2016.html).

2 Council of Economic Advisors, "The Digital Divide and Economic Benefits of Broadband Access," March 2016 (available at https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160308_broadband_cea_issue_brief.pdf)

Sources: California Emerging Technology Fund, "Internet Connectivity and the 'Digital Divide' in California Households: 2016," July 2016; Testimony of Trevor R. Roycroft on Behalf of TURN, CPUC Competition Investigation I.15-11-007, filed 11/5/2015, public version 6/1/ 2016; CPUC Competition Report, Dec. 2016.

Broadband Data Analysis

The AT&T Footprint

AT&T's total California wireline broadband footprint encompasses 9,683,239 households, or 70.8 percent of total California households.[3] The analysis in this report focuses on this footprint–the households located in areas where AT&T California is the Incumbent Local Exchange Carrier (ILEC). The data was compiled from two sources. The AT&T California broadband figures were compiled using the FCC Form 477 data. We used the most recent dataset, which presents data as of June 2016. The FCC Form 477 data is self-reported by each company and contains the maximum speed that companies advertise by census block.[4] The income data was derived from the American Community Survey (ACS) five-year estimates, which provides demographic data at the block group level.[5] The methodology is explained in more detail in the Appendix.

The FCC requires companies to report data separately for wireline, fixed wireless, and mobile broadband, as well as for residential consumer and business broadband availability. This study analyzes only wireline broadband advertised by AT&T to residential customers; all other broadband data is excluded. This methodology is consistent with the FCC 2016 Broadband Progress Report and the CPUC 2016 Competition Report, both of which explain that wireless is not a substitute for a home wireline connection because wireless is less reliable, more expensive, and it is difficult to do important activities such as homework or apply for a job on a smartphone or small mobile device.[6]

Because the FCC Form 477 data does not report the number of households with no broadband availability, this report focuses only on characteristics of California households with access to AT&T wireline broadband. However, the approximate number of California households in AT&T's footprint with no broadband available from AT&T as of December 2015 was 252,075, comprising 2.5 percent of California households.[7] This data is reported in Appendix Table 7.

This report analyzes AT&T residential wireline broadband deployment in California in two ways: technology and speed.

In AT&T service areas there are 252,075 households with no broadband available.

3 This figure does not include the small number of households where AT&T is an incumbent local exchange carrier but offers no broadband services. In total, AT&T's California wireline network spans 280,964 census blocks.

4 FCC, Form 477 Data, June 30, 2016 (available at https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477).

5 U.S. Census Bureau, American Community Survey (ACS) 2011-2015 (5-Year Estimates). Prepared by Social Explorer (available online at http://www.socialexplorer.com/explore/tables).

6 FCC, 2016 Broadband Progress Report, Jan. 29, 2016 (available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-6A1.pdf); California Public Utilities Commission, Decision Analyzing the California Telecommunications Market, Investigation 15-11-007, Dec. 8, 2016, pp 11,47-8 (available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M171/K031/171031953.pdf)

7 Author's calculation from FCC ArcGIS File of AT&T ILEC territory and FCC Form 477 database, Dec. 15, 2015.

AT&T uses three wireline broadband technologies:

- **DSL** is the oldest and slowest wireline broadband technology. DSL delivers data traffic over the traditional copper network at download speeds typically in the range between 0.768 Mbps and 6 Mbps, depending on the customer's distance from the switch. This is the only wireline broadband technology available to 2,677,141 California households (27.6 percent) in AT&T's wireline footprint.
- **VDSL, which AT&T markets as U-verse**, is a fiber-to-the-node (FTTN) network that delivers data over fiber to a neighborhood cabinet and then over the traditional copper network to the customer location. This technology typically delivers Internet download speeds between 12 and 18 Mbps over a single copper pair (again depending on the distance from the switch), but the speed can go up to 75 Mbps with pair bonding (two copper pairs) and boosts in digital frequency. AT&T U-verse deployment began in 2006 and continued through 2015. Almost three-quarters (71.6 percent) of California households in the AT&T wireline footprint–6,937,319 households–have access to U-verse Internet, almost all in urban or suburban communities. AT&T has largely bypassed rural communities in deploying U-verse.
- **Fiber-to-the-Home (FTTH).** In the past year, AT&T began to deploy all-fiber networks in communities across its 21-state wireline footprint, including California. All-fiber networks are capable of delivering "Gigapower" speeds of up to 1,000 Mbps download and upload. To win regulatory approval of its DirecTV acquisition, AT&T committed to deploy all-fiber networks to 12.5 million customer locations by 2019. As of April 20, 2017 AT&T reported that it had deployed all-fiber networks to 4.6 million customer locations across its 21-state footprint.[8]

8 FCC, AT&T/DirecTV Order, MB Docket No. 14-90, July 28, 2015 (rel) (available at https://www.fcc.gov/transaction/att-directv). AT&T Press Release, April 20, 2017.

AT&T's Initial Fiber-to-the-Home Deployment Targets High-Income Households

This analysis of the June 2016 FCC Form 477 data provides a first look at the income characteristics of the California communities that AT&T has chosen as pioneers in its fiber-to-the-home deployment. The June 2016 data reports AT&T fiber-to-the-home deployment in 2,886 census blocks reaching 68,029 households. Because there is no regulatory oversight of AT&T's fiber-to-the-home deployment, AT&T is free to choose the communities in which it builds its all-fiber GigaPower network. Our analysis finds that AT&T has built its all-fiber network disproportionately in higher income communities. If this pattern continues, it has troubling consequences for low- and moderate-income Californians, leaving many without access to AT&T's gold standard all-fiber network and exacerbating the digital divide.

Table 1 and Charts 1 through 8 detail the median household income for the most advanced technology available to households across California and in seven counties where AT&T has deployed fiber-to-the-home. A clear pattern emerges: those with access to AT&T's fiber-to-the-home network have the highest median household income and those with only DSL availability have the lowest median income.

- The median household income of California communities with access to AT&T's fiber-to-the-home (FTTH) network is $94,208, to U-verse is $67,021, and to the DSL network is $53,186.
- The median household income for fiber-to-the-home households exceeds those with only U-verse availability by $27,187 (28.9 percent) and those with only DSL availability by $41,022 (43.5 percent).
- This pattern is replicated in each of the seven counties where AT&T has early fiber deployment. For example, in Los Angeles County, the median income of households with fiber-to-the-home access is $110,474, compared with $60,534 for those with U-verse availability, and $47,894 for those with only DSL availability. This amounts to differences of $49,940 (45.2 percent) for U-verse and $62,580 (56.6 percent) for DSL.
- Our analysis did not find a correlation between the areas where AT&T has deployed its fiber-to-the-home technology and racial/ethnic characteristics, but policymakers should continue to monitor this aspect of AT&T's fiber deployment going forward.

Table 1: Median Household Income by AT&T Broadband Technology Speed

County	Technology	Total Households	% of Household by Tech	Median Household Income	Difference from Fiber to the Home (Median Household Income)	% Difference from Fiber to the Home (Median HH Income)
	DSL	736,230	34.0%	$47,894	$(62,580)	-56.6%
	U-Verse	1,425,810	65.8%	$60,534	$(49,940)	-45.2%
	Fiber to the Home	4,881	0.2%	$110,474		
Los Angeles	**All Technologies**	**2,166,921**		**$54,195**	**$(56,279)**	**-50.9%**
	DSL	113,251	10.1%	$63,007	$(67,183)	-51.6%
	U-Verse	996,576	89.1%	$69,247	$(60,943)	-46.8%
	Fiber to the Home	8,178	0.7%	$130,190		
San Diego	**All Technologies**	**1,118,005**		**$68,704**	**$(61,486)**	**-47.2%**
	DSL	214,511	26.4%	$89,374	$(14,189)	-13.7%
	U-Verse	591,542	72.7%	$75,400	$(28,163)	-27.2%
	Fiber to the Home	7,115	0.9%	$103,563		
Orange	**All Technologies**	**813,168**		**$80,196**	**$(23,367)**	**-22.6%**
	DSL	46,754	8.2%	$84,160	$(26,984)	-24.3%
	U-Verse	525,210	91.7%	$76,416	$(34,728)	-31.2%
	Fiber to the Home	966	0.2%	$111,144		
Alameda	**All Technologies**	**572,930**		**$77,421**	**$(33,723)**	**-30.3%**
	DSL	57,828	13.6%	$50,513	$(27,523)	-35.3%
	U-Verse	362,938	85.5%	$53,499	$(24,537)	-31.4%
	Fiber to the Home	3,672	0.9%	$78,036		
Sacramento	**All Technologies**	**424,438**		**$52,262**	**$(25,774)**	**-33.0%**
	DSL	74,511	18.9%	$83,707	$(14,061)	-14.4%
	U-Verse	314,099	79.6%	$80,792	$(16,976)	-17.4%
	Fiber to the Home	6,061	1.5%	$97,768		
Contra Costa	**All Technologies**	**394,671**		**$82,273**	**$(15,495)**	**-15.8%**
	DSL	59,614	23.0%	$39,003	$(39,394)	-50.2%
	U-Verse	195,142	75.2%	$50,361	$(28,036)	-35.8%
	Fiber to the Home	4,639	1.8%	$78,397		
Fresno	**All Technologies**	**259,395**		**$44,270**	**$(34,127)**	**-43.5%**
	DSL	2,677,141	27.6%	$53,186	$(41,022)	-43.5%
	U-Verse	6,937,319	71.6%	$67,021	$(27,187)	-28.9%
	Fiber to the Home	68,029	0.7%	$94,208		
Ca State-Wide Total	**All Technologies**	**9,682,489**		**$61,911**	**$(32,297)**	**-34.3%**

Sources: FCC Form 477, June 30, 2016 and American Community Survey 2011-2015 (five-year estimates)

Charts 1-8. AT&T Fiber to the Home Deployment in California
Median Household Income by Technology

Chart 1. California State

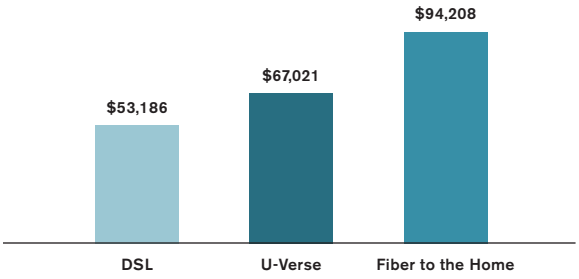


Chart 2. Los Angeles County

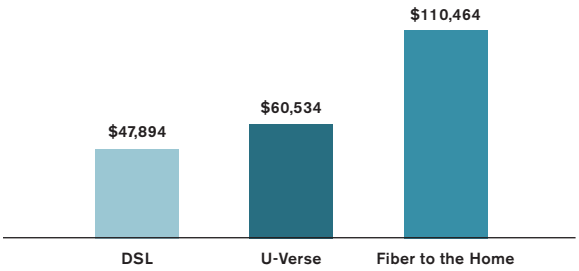


Chart 3. San Diego County

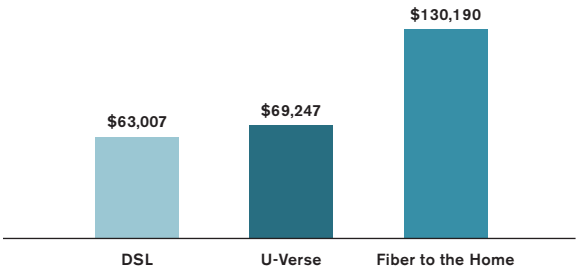


Chart 4. Orange County

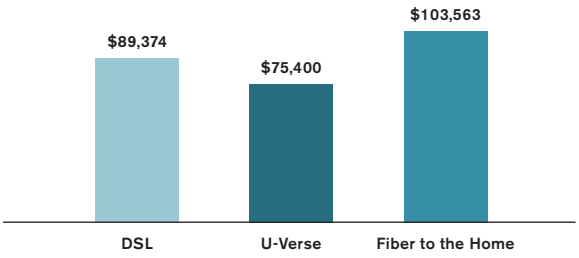


Chart 5. Alameda County

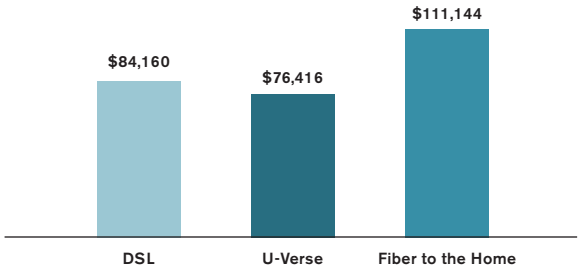


Chart 6. Sacramento County

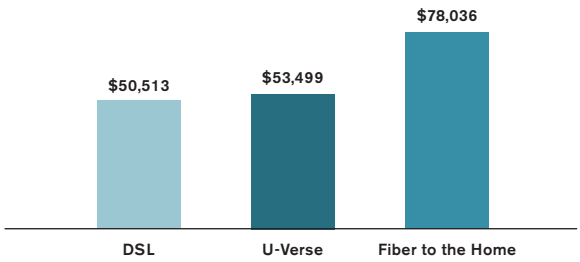


Chart 7. Contra Costa County

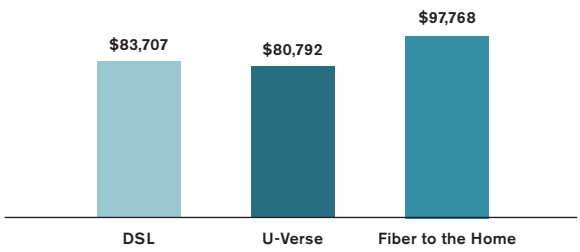
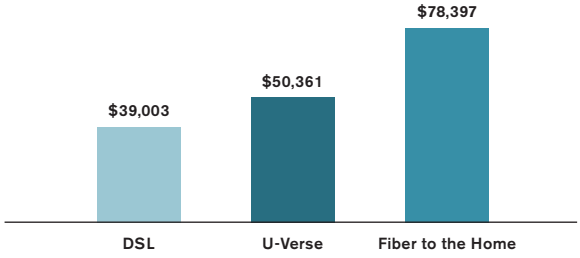


Chart 8. Fresno County



Source: FCC form 477, June 2016 (most recent data)

AT&T Leaves Many California Communities Stuck in the Slow Lane

AT&T's advertised broadband speeds leave many Californians underserved, below the official CPUC standard pf 6/1 Mbps, and without high-speed broadband meeting the federal standard of 25/3 Mbps. The following figures drawn from our analysis present a stark picture of the inadequacy of AT&T's wired broadband network in California. A complete list of AT&T broadband speeds by county is available in Table 5 in the Appendix.

- 18.1 percent of California households in AT&T's wireline footprint, or approximately 1.7 million households, are underserved by AT&T broadband, without access to the CPUC benchmark of 6 Mbps broadband download.
- 42.8 percent of California households in AT&T's wireline footprint–approximately 4.1 million households–cannot get AT&T broadband at the FCC broadband speed standard of 25/3 Mbps.
- AT&T does not advertise any broadband, at any speed, to more than one-quarter million (252,075) California households in its wireline footprint. (This figure is based on data from December 2015). [9]
- More than one-quarter (27.6 percent) of California households in AT&T's wireline footprint–approximately 2.7 million households–can only get DSL from AT&T.
- AT&T's higher-speed U-verse broadband technology is not available to virtually any household in 14 largely rural counties.
- Many urban and suburban counties have a significant number of households that are underserved by AT&T broadband. In Los Angeles County, approximately 443,000 households (20.4 percent) in AT&T's wireline footprint lack access to AT&T broadband at 6/1 Mbps and approximately 1.1 million households (51.5 percent) lack access to AT&T broadband at 25/3 Mbps. In Santa Clara County, the heart of Silicon Valley, approximately 98,000 households (17.5 percent) are underserved by AT&T and approximately 176,000 lack access to AT&T broadband at 25/3 Mbps.

Table 5 in the Appendix breaks these statewide figures down by county. In 14 largely rural counties, virtually no household has access to AT&T broadband at the FCC's 25/3 Mbps speed and between one-third and two-thirds or more households are underserved without access to AT&T broadband at the 6 Mbps download CPUC benchmark.

Table 6 in the Appendix provides a complete list of AT&T broadband technology deployment by county. In 14 largely rural counties–Amador, Butte, Calaveras, Glenn, Humboldt, Imperial, Tehama, Lake, Mendocino, Nevada, San Luis Obispo, Shasta, Siskiyou, and Tuolumne–AT&T has not deployed its more advanced U-verse fiber-to-the-node (FTTN) or fiber-to-the-home technology to virtually any household.

AT&T's lack of high-speed Internet is not limited to rural areas: the company also falls short in populous urban and suburban counties throughout California. Table 3 shows the number of households without access to AT&T broadband at CPUC and FCC standard speeds for the 10 counties where AT&T has the largest footprint.

9 Over the next six years, AT&T has made a commitment to the FCC to use federal Connect America Fund subsidies to deploy broadband at a minimum of 10/1 Mbps to 141,000 underserved customer locations, but this will still leave more than half of AT&T's wireline footprint without broadband access.

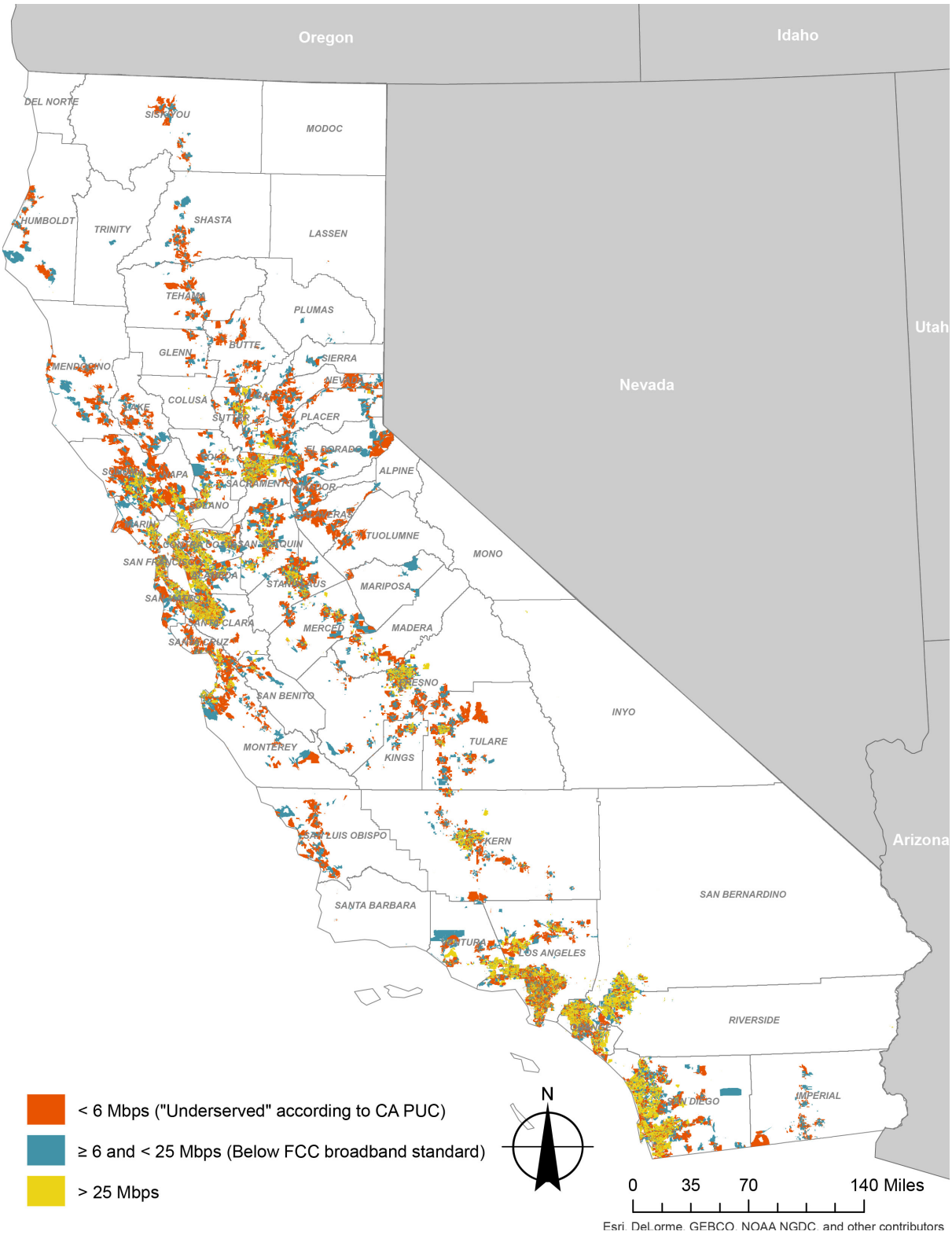
Table 2. Counties with Slowest AT&T Broadband in AT&T Wireline Footprint

County	Underserved Households without access to 6 Mbps Download or Above (CPUC Standard)	Households without access to 25/3 Mbps or Above (FCC Standard)
Butte	41,938 (61.2%)	68,516 (100%)
Calaveras	8,076 (58.1%)	13,906 (100%)
Tuolumne	8,098 (55.9%)	14,482 (100%)
Shasta	24,319 (52.2%)	46,625 (100%)
Nevada	18,480 (46.5%)	39,520 (99.4%)
San Luis Obispo	42,851 (45.6%)	93,897 (100%)
Humboldt	18,049 (43.4%)	41,561 (100%)
Lake	10,589 (41.1%)	25,763 (100%)
Mendocino	9,637 (38.8%)	24,833 (100%)
Tehama	6,515 (38.5%)	16,927 (100%)
El Dorado	24,308 (37%)	50,359 (76.8%)
Santa Cruz	31,845 (34.6%)	69,393 (75.4%)
Amador	2,837 (33.1%)	8,569 (100%)

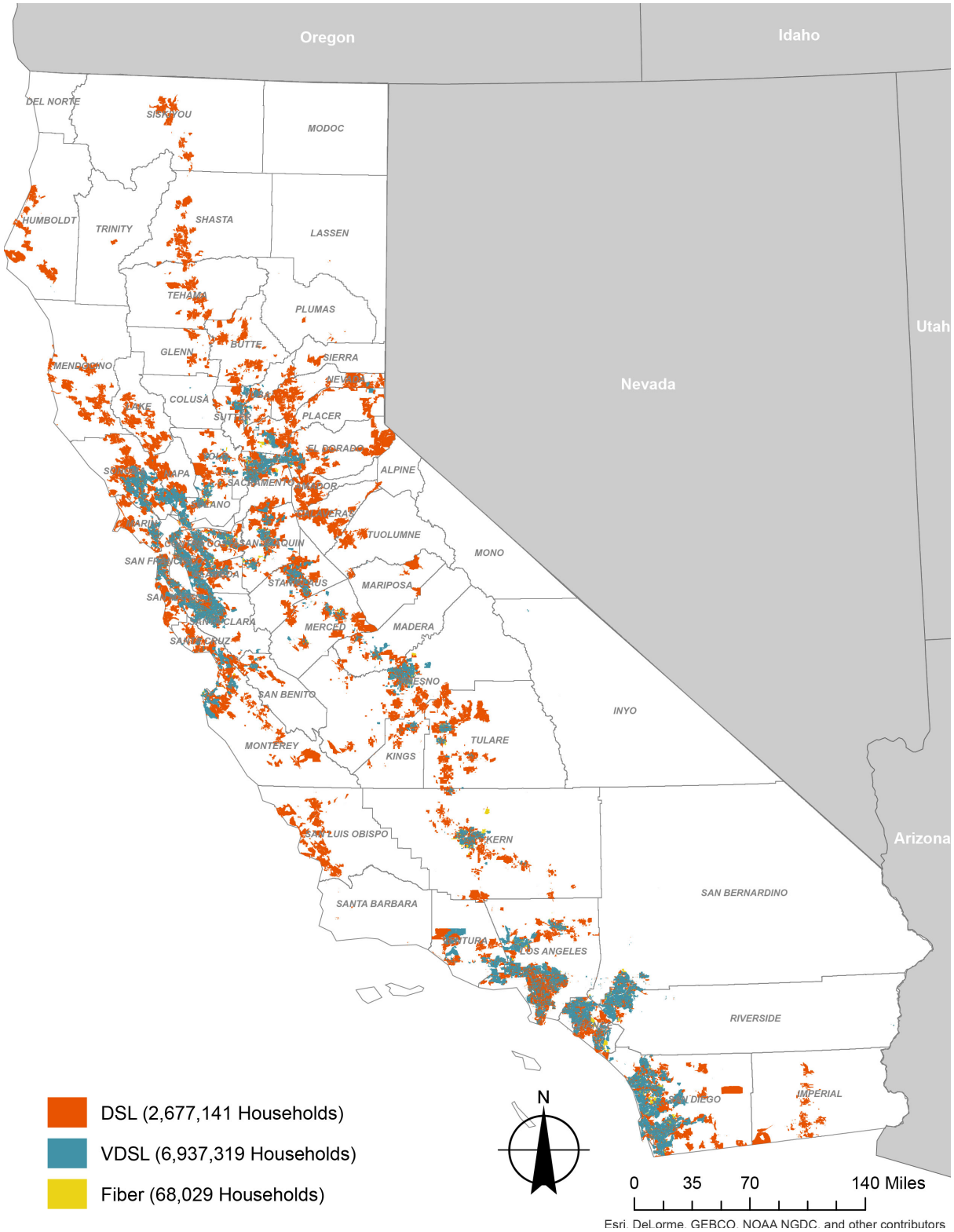
Table 3. Households without Access to Broadband at CPUC and FCC Standards for 10 Largest Urban/Suburban Counties in AT&T Wireline Footprint

County	Underserved Households without access to 6 Mbps download or Above (CPUC Standard)	Households without access to 25/3 Mbps or Above (FCC Standard)	Total Number of Households in AT&T's Footprint
Los Angeles	443,007 (20.4%)	1,116,461 (51.5%)	2,167,671
San Diego	135,692 (12.1%)	277,253 (24.8%)	1,118,005
Orange	167,512 (20.6%)	325,993 (40.1%)	813,168
Alameda	62,211 (10.9%)	142,099 (24.8%)	572,930
Santa Clara	98,860 (17.5%)	176,271 (31.1%)	566,222
Sacramento	62,106 (14.6%)	129,262 (30.5%)	424,438
Contra Costa	49,647 (12.6%)	131,794 (33.4%)	394,671
San Francisco	49,375 (13.2%)	258,020 (68.7%)	375,473
San Mateo	53,025 (20.0%)	98,862 (37.3%)	264,782
Fresno	36,683 (14.1%)	97,646 (37.6%)	259,395

Map 1: Fastest AT&T Broadband Speed Available by Census Block as of June 30, 2016



Map 2: Most Advanced AT&T Broadband Technology Available by Census Block as of June 30, 2016



Policy Implications

This report provides a troubling view of AT&T's wireline broadband deployment in California. It shows that AT&T's initial fiber-to-the-home deployment reaches predominately higher-income communities, leaving low- and moderate-income Californians behind. It also shows that AT&T has left rural, and even many urban and suburban, Californians stuck in the slow lane.

In 2006, in response to a request from AT&T, the legislature established rules for statewide video franchising with passage of the Digital Infrastructure and Video Competition Act of 2006 (DIVCA, AB2897). The statute required AT&T to upgrade its network for video capability to at least 50 percent of California households, at least 30 percent of whom must be low-income.[10] As a result, AT&T was required to build its U-verse network to households at all income levels. However, as this report demonstrates, AT&T focused its Uverse investment in more densely-populated urban and suburban areas, leaving rural areas behind.

But today, as AT&T embarks on a new wave of wired infrastructure investment in California, the legislature has taken away substantial public oversight over its fiber deployment. In 2012, the legislature, with AT&T support, passed the "IP Deregulation Bill" (SB 1161) which prohibits regulatory authority over Voice-over-Internet-Protocol (VoIP) and all IP-enabled broadband services. The bill sunsets in 2020. Until that date,or unless the statute is repealed,the legislature has effectively taken away CPUC authority to adopt policies to close the high-speed digital divide and to promote equitable fiber deployment in California.

This report demonstrates that deregulation is not working to drive AT&T investment to ensure that all California communities have access to the essential infrastructure of the 21st century – high-speed broadband. It is critical that policymakers take proactive steps to get AT&T to accelerate its wireline network investment and fiber deployment to bring high-speed broadband to all California communities.

10 A.B. 2987, Ch. 700, Stats. 2006.; Cal. Pub. Util. Code, §5800 – 5970 - Digital Infrastructure and Video Competition Act of 2006 (DIVCA).

Recommendations

Access to high-speed broadband is not a luxury, it is a necessity. Yet too many Californians are trapped on the wrong side of the digital divide. To remain a leader in high-tech innovation, California must do better. Public oversight and intervention is needed to ensure universal and affordable access to high-speed communications services. Policymakers must hold network carriers accountable to meet deployment benchmarks to ensure that essential services like high-speed broadband are provided in an affordable and equitable way.

Therefore, our recommendations are:

- **Policymakers and community leaders** should call on AT&T to accelerate investment in its wireline broadband network in California, expanding deployment of its all-fiber network to more communities on an equitable basis, and ensuring that everyone in its wireline footprint has access to a high-speed broadband connection.
- **Policymakers and community leaders** should call on AT&T to make available to the public its fiber deployment plans: where it plans to deploy fiber, the timeline for the deployment, the number of households that will be served by fiber, internal measures to ensure equitable access to diverse, low-income communities, and network investment plans in rural and other areas.
- **The California legislature** should reassert public authority over broadband network deployment by repealing SB1161, which places some limits on such public oversight, and should adopt legislation that establishes enforceable fiber deployment benchmarks that apply to all providers.
- **The California Public Utilities Commission** should convene public hearings in 2017 across the state on the availability of high-speed broadband in order to inform its 2018 report on the state of broadband in California. It should also continue to require broadband carriers to provide accurate information on broadband deployment by speed, technology, and customer types at a granular Census Block level and audit such data for accuracy; Lastly, it should publish and make available to the public statutorily-mandated reports in a timely manner.

Appendix

Methodology

Data Sources

The AT&T California broadband statistics referenced in this report were compiled using FCC Form 477 data available on the FCC website.[11] We used the most recent publicly available dataset which presents data as of June 30, 2016. The FCC Form 477 data is self-reported by each company.

The FCC requires companies to report their data separately for wireline, fixed wireless and mobile broadband. The FCC also requires companies to report data separately for consumer and business broadband availability. Because this study analyzes fixed wireline broadband availability to residential customers, we eliminated from the data all places where AT&T does not provide residential (termed "consumer" in the FCC data) broadband.

The dataset contains the download and upload speeds advertised by each broadband company at the Census Block level. In an urban area, a Census Block is roughly equivalent to the size of a city block, while in rural areas Census Blocks can be larger due to low population density. The FCC notes that it is possible for broadband to be advertised to one household in a Census Block while not being available to another household in that same Block. However, for the purposes of this report, we assume that if a company advertises broadband with a particular speed and technology in a Census Block, every household in the Block has access to that speed and technology. This is a conservative assumption because it may overstate the true availability of broadband to all households in the Census Block. Because the Form 477 data concerns the speeds advertised by companies in various Census Block, this report does not examine consumer adoption of AT&T broadband in California, nor does this report examine whether the speeds advertised by AT&T are the actual speeds delivered by AT&T.

The FCC dataset contains information on four wireline broadband technologies offered by AT&T in California, summarized in the table below. This report classifies the technologies into three categories: DSL, U-verse, and fiber.

Table 4: AT&T Technologies in FCC Data[12]

FCC Technology Code	FCC Description of Technology	Classification of Technology in Report
10	Asymmetric xDSL	DSL
11	ADSL2, ADSL2+	DSL
12	VDSL	U-verse
50	Optical Carrier / Fiber to the end user (Fiber to the home or business end user, does not include "fiber to the curb")	Fiber

The FCC Form 477 data was cleaned and combined with other datasets to conduct the analysis in this report. The most important steps in this process were the following:

- We found AT&T's fastest advertised download speed in each Census Block. AT&T reports maximum advertised speeds in 10 speed tiers: 0.768 Mbps, 1.5 Mbps, 3 Mbps, 6 Mbps, 12 Mbps, 18 Mbps, 24 Mbps, 45 Mbps, 75 Mbps, 1000 Mbps.
- We found AT&T's most advanced technology available in each Census Block, with Fiber (Tech Code 50) being the most advanced and DSL (Tech Codes 10 and 11) being the least advanced.

11 FCC, Form 477 Data, June 30, 2016 (available at https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477)

12 https://www.fcc.gov/general/technology-codes-used-fixed-broadband-deployment-data

- We merged the FCC data with 2010 Census data to determine the number of housing units (referred to as "households" in this report) by Census Block.[13] Each Census Block is identified by a 12-digit FIPs Code. The third through fifth digit of this code identifies the county in which the Census Block is located. These digits were used to assign a county name to each Census Block.
- We merged the FCC data with American Community Survey (ACS) 5-Year Estimates of median household income from 2011-2015.[14] The smallest geographical unit at which the ACS provides data on median household income is the Census Block Group, which typically has a population of 600 to 3,000 people. Each Census Block is located within a Census Block Group. We merged the FCC and ACS data by assigning to each Census Block the median household income of the Block Group containing that Block. Given the small number of households in each Block Group, we assume any variation in median household income across the Blocks located in a Block group would be minimal. Therefore, this procedure gives us reasonably accurate estimates of the median income of households with access to each AT&T broadband technology and speed.
- We identified in the December 2015 FCC data those Census Blocks where AT&T is an Incumbent Local Exchange Carrier but does not provide broadband. The Form 477 only requires reporting where a company provides broadband, but does not require reporting of "no broadband" Census Blocks. These Census Blocks were found through a three-stage process. First, we mapped a Shapefile of the FCC's March 2016 report of the all Incumbent Local Exchange Carrier (ILEC) study areas in the U.S. using ArcGIS, an industry-standard geographic information system software program.[15] Second, we extracted AT&T California's ILEC area and ran an intersect command in ArcGIS with a Shapefile of all California Census Blocks downloaded from the Census Bureau's TIGER website. This intersect command allowed us to determine which Census Blocks are located in AT&T California's ILEC areas. Third, we ran an erase command in ArcGIS to remove from the ILEC area all Census Blocks where AT&T advertises broadband, leaving just the Census Blocks where AT&T is an ILEC but provides no broadband.

Lastly, it is important to note that while some reports include upload speeds in their analysis, this report focuses on download speeds. Therefore, we assume that any household with download speeds of 25 Mbps or above will also have upload speeds of 3 Mbps or above.

Statewide Broadband Maps

The maps in this report were created using ArcGIS, an industry-standard geographic information system software program. AT&T advertises 10 different broadband speeds in California (0.768, 1.5, 3, 6, 12, 18, 24, 45, 75, and 1000 Mbps). However, in order to increase the legibility of the county-level maps, these speeds were grouped into three colors corresponding to the following value ranges:

- **Red:** Less than 6 Mbps
- **Blue:** Greater than or equal to 6 Mbps and less than 25 Mbps
- **Green**: Greater than or equal to 25

13 2010 was the most recent year in which the Census Bureau collected housing unit counts at the Census Block level. The statewide proportion of housing units by county has changed relatively little since 2010.

14 U.S. Census Bureau, American Community Survey (ACS) 2011-2015 (5-Year Estimates). Prepared by Social Explorer (available online at http://www.socialexplorer.com/explore/tables)

15 The FCC's March 2016 study areas Shapefile is available at https://github.com/FCC/SABdata/blob/master/study_areas_10mar16.zip

Table 5. Number of Households Without Access to AT&T Wireline Broadband at Benchmark Speeds in AT&T Wireline Footprint

County	6 Mbps or greater (CA benchmark)		25 Mbps or greater (FCC benchmark)		Total # of Households in County Located within AT&T Incumbent Carrier Area	
	HH Count	% of Cnty HH	HH Count	% of Cnty HH	HH Count	
Alameda	62,211	10.9%	142,099	24.8%	572,930	
Alpine	0	0.0%	529	100.0%	529	*
Amador	2,837	33.1%	8,569	100.0%	8,569	
Butte	41,938	61.2%	68,516	100.0%	68,516	
Calaveras	8,076	58.1%	13,906	100.0%	13,906	
Colusa	9	2.0%	112	25.3%	443	*
Contra Costa	49,647	12.6%	131,794	33.4%	394,671	
Del Norte	23	20.2%	114	100.0%	114	*
El Dorado	24,308	37.0%	50,359	76.8%	65,613	
Fresno	36,683	14.1%	97,646	37.6%	259,395	
Glenn	1,583	19.1%	8,186	98.9%	8,278	
Humboldt	18,049	43.4%	41,561	100.0%	41,565	
Imperial	9,296	20.0%	46,399	100.0%	46,399	
Inyo	0	0.0%	25	7.4%	340	*
Kern	35,473	16.0%	95,895	43.3%	221,386	
Kings	4,242	11.9%	20,240	56.9%	35,588	
Lake	10,589	41.1%	25,763	100.0%	25,763	
Lassen	0	0.0%	40	100.0%	40	*
Los Angeles	443,007	20.4%	1,116,461	51.5%	2,167,671	
Madera	4,857	16.9%	11,359	39.6%	28,718	

Sources: FCC Form 477, June 30, 2016 (broadband speeds); 2010 Census (household numbers)

Table 5. Number of Households Without Access to AT&T Wireline Broadband at Benchmark Speeds in AT&T Wireline Footprint (con't.)

County	6 Mbps or greater (CA benchmark)		25 Mbps or greater (FCC benchmark)		Total # of Households in County Located within AT&T Incumbent Carrier Area	
	HH Count	% of Cnty HH	HH Count	% of Cnty HH	HH Count	
Marin	20,058	21.4%	47,785	51.0%	93,727	
Mariposa	305	24.6%	1,240	100.0%	1,240	*
Mendocino	9,637	38.8%	24,833	100.0%	24,833	
Merced	18,692	28.8%	39,804	61.3%	64,920	
Monterey	27,922	21.6%	59,604	46.2%	129,096	
Napa	7,229	14.0%	17,480	33.9%	51,621	
Nevada	18,480	46.5%	39,520	99.4%	39,745	
Orange	167,512	20.6%	325,993	40.1%	813,168	
Placer	19,475	24.2%	47,338	58.7%	80,612	
Plumas	33	12.6%	262	100.0%	262	*
Riverside	14,076	6.7%	38,281	18.1%	211,328	
Sacramento	62,106	14.6%	129,262	30.5%	424,438	
San Benito	2,606	16.7%	5,648	36.1%	15,633	
San Bernardino	12,859	9.6%	34,414	25.8%	133,567	
San Diego	135,692	12.1%	277,253	24.8%	1,118,005	
San Francisco	49,375	13.2%	258,020	68.7%	375,473	
San Joaquin	20,637	11.0%	57,887	30.9%	187,610	
San Luis Obispo	42,851	45.6%	93,897	100.0%	93,897	
San Mateo	53,025	20.0%	98,862	37.3%	264,782	
Santa Barbara	739	55.5%	1,331	100.0%	1,331	*

Table 5. Number of Households Without Access to AT&T Wireline Broadband at Benchmark Speeds in AT&T Wireline Footprint (con't.)

County	6 Mbps or greater (CA benchmark)		25 Mbps or greater (FCC benchmark)		Total # of Households in County Located within AT&T Incumbent Carrier Area	
	HH Count	% of Cnty HH	HH Count	% of Cnty HH	HH Count	
Santa Clara	98,860	17.5%	176,271	31.1%	566,222	
Santa Cruz	31,845	34.6%	69,393	75.4%	91,993	
Shasta	24,319	52.2%	46,625	100.0%	46,625	
Sierra	21	7.3%	287	100.0%	287	*
Siskiyou	2,983	25.6%	11,634	100.0%	11,634	
Solano	17,173	12.1%	36,256	25.5%	142,182	
Sonoma	36,661	19.1%	79,959	41.7%	191,579	
Stanislaus	19,883	12.2%	56,172	34.5%	162,774	
Sutter	4,529	14.3%	12,219	38.5%	31,765	
Tehama	6,515	38.5%	16,927	100.0%	16,927	
Trinity	0	0.0%	75	100.0%	75	*
Tulare	21,208	19.6%	56,277	52.0%	108,196	
Tuolumne	8,098	55.9%	14,482	100.0%	14,482	
Ventura	25,607	21.2%	59,213	49.0%	120,934	
Yolo	11,461	16.3%	26,131	37.1%	70,384	
Yuba	2,533	11.8%	7,441	34.7%	21,458	
California State-wide	**1,747,833**	**18.1%**	**4,147,649**	**42.8%**	**9,683,239**	

Sources: FCC Form 477, June 30, 2016 (broadband speeds); 2010 Census (household numbers)

Table 6: No. of Households & Census Blocks With Each AT&T Broadband Technology By County

County	DSL		U-Verse		Fiber-to-the-Home		Total AT&T Footprint	
	# of Households	# of Census Blocks	# of Households	# of Census Blocks	# of Households	# of Census Blocks	# of Households	# of Census Blocks
Alameda	46,754	3,358	525,210	13,350	966	46	572,930	16,754
Alpine	529	23	0	0	0	0	529	23
Amador	8,569	446	0	0	0	0	8,569	446
Butte	68,457	2,341	59	1	0	0	68,516	2,342
Calaveras	13,906	565	0	0	0	0	13,906	565
Colusa	79	14	364	33	0	0	443	47
Contra Costa	74,511	3,201	314,099	8,814	6,061	297	394,671	12,312
Del Norte	114	15	0	0	0	0	114	15
El Dorado	43,019	1,846	22,416	612	178	17	65,613	2,475
Fresno	59,614	3,750	195,142	6,161	4,639	241	259,395	10,152
Glenn	8,186	777	92	2	0	0	8,278	779
Humboldt	41,399	2,477	166	4	0	0	41,565	2,481
Imperial	46,158	2,214	241	2	0	0	46,399	2,216
Inyo	15	2	325	16	0	0	340	18
Kern	65,368	3,987	151,237	4,591	4,781	170	221,386	8,748
Kings	16,639	1,208	18,892	797	57	2	35,588	2,007
Lake	25,694	1,607	69	3	0	0	25,763	1,610
Lassen	40	5	0	0	0	0	40	5
Los Angeles	736,230	20,600	1,425,810	27,326	4,881	151	2,166,921	48,077
Madera	6,787	516	21,358	1,006	573	35	28,718	1,557

Sources: FCC Form 477, June 30, 2016 and American Community Survey 2011-2015 (five-year estimates)

Table 6: No. of Households & Census Blocks With Each AT&T Broadband Technology By County (con't.)

County	DSL		U-Verse		Fiber-to-the-Home		Total AT&T Footprint	
	# of Households	# of Census Blocks	# of Households	# of Census Blocks	# of Households	# of Census Blocks	# of Households	# of Census Blocks
Marin	30,005	1,206	63,652	1,339	70	1	93,727	2,546
Mariposa	1,129	86	111	2	0	0	1,240	88
Mendocino	24,830	1,543	3	1	0	0	24,833	1,544
Merced	25,547	1,473	37,719	1,130	1,654	78	64,920	2,681
Monterey	37,708	1,835	90,335	2,445	1,053	114	129,096	4,394
Napa	11,272	509	40,313	1,228	36	1	51,621	1,738
Nevada	38,933	1,465	812	8	0	0	39,745	1,473
Orange	214,511	6,867	591,542	12,851	7,115	134	813,168	19,852
Placer	42,489	1,993	37,241	1,049	882	67	80,612	3,109
Plumas	262	15	0	0	0	0	262	15
Riverside	7,750	667	197,978	5,153	5,600	179	211,328	5,999
Sacramento	57,828	3,201	362,938	9,835	3,672	218	424,438	13,254
San Benito	2,826	286	12,668	516	139	5	15,633	807
San Bernardino	8,870	489	123,731	3,178	966	57	133,567	3,724
San Diego	113,251	6,144	996,576	22,302	8,178	255	1,118,005	28,701
San Francisco	215,471	3,176	159,112	2,757	890	4	375,473	5,937
San Joaquin	32,294	2,142	151,042	4,824	4,274	224	187,610	7,190
San Luis Obispo	93,598	3,808	299	2	0	0	93,897	3,810
San Mateo	45,181	2,032	219,600	5,163	1	1	264,782	7,196

Table 6: No. of Households & Census Blocks With Each AT&T Broadband Technology By County (con't.)

County	DSL		U-Verse		Fiber-to-the-Home		Total AT&T Footprint	
	# of Households	# of Census Blocks	# of Households	# of Census Blocks	# of Households	# of Census Blocks	# of Households	# of Census Blocks
Santa Barbara	1,331	48	0	0	0	0	1,331	48
Santa Clara	61,121	2,917	500,791	11,235	4,310	185	566,222	14,337
Santa Cruz	59,240	2,123	32,753	919	0	0	91,993	3,042
Shasta	46,620	2,081	5	1	0	0	46,625	2,082
Sierra	287	33	0	0	0	0	287	33
Siskiyou	11,634	965	0	0	0	0	11,634	965
Solano	15,282	1,155	125,214	3,793	1,686	108	142,182	5,056
Sonoma	41,294	2,082	149,603	3,986	682	17	191,579	6,085
Stanislaus	29,368	1,942	131,995	4,031	1,411	74	162,774	6,047
Sutter	6,741	536	24,516	809	508	21	31,765	1,366
Tehama	16,917	1,278	10	1	0	0	16,927	1,279
Trinity	75	1	0	0	0	0	75	1
Tulare	46,378	3,666	60,083	2,421	1,735	129	108,196	6,216
Tuolumne	14,373	728	109	2	0	0	14,482	730
Ventura	45,691	1,955	74,994	1,824	249	12	120,934	3,791
Yolo	10,337	675	59,571	1,452	476	28	70,384	2,155
Yuba	4,629	340	16,523	689	306	15	21,458	1,044
Total	**2,677,141**	**110,414**	**6,937,319**	**167,664**	**68,029**	**2,886**	**9,682,489**	**280,964**

Sources: FCC Form 477, June 30, 2016 and American Community Survey 2011-2015 (five-year estimates)

Table 7. Households with No AT&T Broadband (as of Dec. 15, 2015)

County	HH Count	% of Cnty HH
Colusa	435	100.0%
Inyo	577	100.0%
Lassen	72	100.0%
Santa Barbara	26	100.0%
Trinity	905	100.0%
Mariposa	1,856	57.8%
Sierra	1,219	52.7%
Plumas	4,807	52.5%
Mendocino	8,238	24.3%
Siskiyou	3,472	21.5%
Tuolumne	5,617	21.0%
Glenn	2,111	20.0%
Calaveras	3,176	18.4%
Tehama	3,578	14.5%
Yuba	3,395	13.0%
Amador	1,242	13.0%
Lake	3,815	11.6%
Madera	3,452	10.6%
Nevada	5,140	10.1%
El Dorado	8,266	9.7%

Source: Author's calculation from FCC shapefile of AT&T ILEC territory and FCC Form 477 broadband database, Dec. 15, 2015

Table 7. Households with No AT&T Broadband (as of Dec. 15, 2015) (con't.)

County	HH Count	% of Cnty HH
Kings	3,589	9.3%
San Benito	1,604	9.2%
Tulare	10,969	8.9%
Humboldt	4,159	8.4%
Butte	7,453	7.9%
Merced	5,265	7.5%
Alpine	42	7.4%
Monterey	8,887	6.6%
Placer	5,739	6.6%
Napa	2,827	5.2%
Shasta	3,176	5.2%
Imperial	2,378	4.9%
San Joaquin	8,518	4.4%
Kern	9,557	4.2%
Fresno	10,115	3.8%
San Luis Obispo	4,160	3.8%
Yolo	2,740	3.8%
Sutter	1,189	3.6%
Solano	4,770	3.2%
Stanislaus	4,514	2.7%

Table 7. Households with No AT&T Broadband (as of Dec. 15, 2015) (con't.)

County	HH Count	% of Cnty HH
Sonoma	5,033	2.6%
San Diego	29,152	2.6%
Santa Clara	13,424	2.4%
Santa Cruz	2,132	2.2%
Orange	12,702	1.6%
Marin	1,340	1.4%
Contra Costa	4,766	1.2%
Ventura	1,219	1.0%
Sacramento	4,304	1.0%
Alameda	5,405	0.9%
Riverside	1,974	0.9%
San Mateo	1,669	0.6%
San Bernardino	763	0.6%
Los Angeles	4,997	0.2%
San Francisco	145	0.0%
California State-wide	**252,075**	**2.5%**

Source: Author's calculation from FCC shapefile of AT&T ILEC territory and FCC Form 477 broadband database, Dec. 15, 2015

The Haas Institute for a Fair and Inclusive Society brings together researchers, community stakeholders, and policymakers to identify and challenge the barriers to an inclusive, just, and sustainable society in order to create transformative change.

Contact

460 Stephens Hall
Berkeley, CA 94720-2330
Tel 510-642-3342
haasinstitute.berkeley.edu

Digital Divide in California

Eli Moore
Program Manager

REPORT

Tuesday, April 25, 2017

Californians need high-speed broadband—it is an essential conduit for opportunity, shaping access to education, employment, health services, and other spheres of life. Internet speed matters. More than half of all Internet traffic is now data-rich video, requiring higher capacity networks. All-fiber networks capable of delivering gigabit speeds have become the global standard for Internet connectivity.

In a first-ever analysis, "AT&T's Digital Divide in California" looks at the deployment of fiber-to-the-home (FTTH) service in California by the largest telecom company in the state. The findings show that the early deployment of the company's "gigapower" all-fiber service is concentrated in wealthier communities, relegating lower-income neighborhoods to less advanced technologies that offer markedly slower speeds. Drawing on newly-released FCC data, the report highlights income-based disparities in service across 71 percent of California, or 56 California counties in which AT&T provides wireline phone and internet service. The report also reveals 42.8 percent of California households – approximately 4.1 million homes – in AT&T's network do not have access to high-speed broadband from AT&T as defined by the Federal Communications Commission, which classifies this service as a 25 Megabits per second (Mbps) download/3 Mbps upload connection.

Download AT&T's Digital Divide in California.

DIGITAL DIVIDE —

Study on AT&T’s fiber deployment: 1Gbps for the rich, 768kbps for the poor

Median incomes $41,000 higher where AT&T builds fiber in California.

JON BRODKIN - 4/25/2017, 3:01 PM

AT&T's deployment of fiber-to-the-home in California has been heavily concentrated in higher-income neighborhoods, giving affluent people access to gigabit speeds while others are stuck with Internet service that doesn't even meet state and federal broadband standards, according to a new analysis.

"Because there is no regulatory oversight of AT&T’s fiber-to-the-home deployment, AT&T is free to choose the communities in which it builds its all-fiber GigaPower network," UC Berkeley’s Haas Institute for a Fair and Inclusive Society wrote in a report released today. "Our analysis finds that AT&T has built its all-fiber network disproportionately in higher income communities. If this pattern continues, it has troubling consequences for low- and moderate-income Californians, leaving many without access to AT&T’s gold standard all-fiber network and exacerbating the digital divide."

California households with access to AT&T's fiber service have a median income of $94,208, according to "AT&T's Digital Divide in California," in which the Haas Institute analyzed Federal Communications Commission data from June 2016. The study was funded by the Communications Workers of America, an AT&T workers' union that's been involved in contentious negotiations with the company.

By contrast, the median household income is $53,186 in California neighborhoods where AT&T provides only DSL, with download speeds typically ranging from 768kbps to 6Mbps. At the low end, that's less than 1 percent of the gigabit speeds offered by AT&T's fiber service.

The median income in areas with U-verse VDSL, which ranges from 12Mbps to 75Mbps, is $67,021.

The income difference is even more stark in some parts of California. "For example, in Los Angeles County, the median income of households with fiber-to-the-home access is $110,474, compared with $60,534 for those with U-verse availability, and $47,894 for those with only DSL availability," the report said.

In 4.1 million California households, representing 42.8 percent of AT&T's California service area, AT&T's fastest speeds fell short of the federal broadband definition of 25Mbps downloads and 3Mbps uploads, the report said.

The numbers are still bad even when using the California utility commission's lower 6Mbps/1.5Mbps broadband standard. "A full 18.1 percent of California households in AT&T's wireline footprint—approximately 1.7 million households—lack access to AT&T broadband according to this definition," the Haas Institute wrote.

Overall, about 68,000 California households had AT&T fiber as of the June 2016 data, while 6.9 million had VDSL and 2.7 million had DSL. The fiber number is higher now because of AT&T's ongoing construction. AT&T said it now offers its fiber Internet to 500,000 customer locations in California, but didn't provide median income data for the newly deployed locations.

- ***UC Berkeley's Haas Institute for a Fair and Inclusive Society***
- ***UC Berkeley's Haas Institute for a Fair and Inclusive Society***

AT&T/DirecTV merger required fiber deployment

The California analysis is similar to another recent one in Cleveland that found that "AT&T has systematically discriminated against lower-income Cleveland neighborhoods in its deployment of home Internet and video technologies over the past decade."

After being contacted by Ars, AT&T said, "We don't favor any demographic when it comes to providing any service we offer. The market for Internet service has never been more vibrant and competitive, both wireless and wireline. We would like nothing more than to serve every customer who wants our services."

AT&T argued that the study ignores the impact of mobile broadband on Internet affordability and availability.

AT&T started offering fiber-to-the-home service in late 2013, and in 2015 it agreed to bring fiber to at least 12.5 million customer locations nationwide by mid-2019 in exchange for the FCC's approval of its DirecTV acquisition. In its latest fiber announcement last week, AT&T said it now markets fiber to 4.6 million locations across 52 metro areas and will add 2 million more before 2017 is over. Parts of Oakland were just provided with AT&T fiber service.

The DirecTV merger conditions also required AT&T to offer Internet service for $5 or $10 a month to people with low incomes. But AT&T can use DSL to meet that condition, and at one point the company refused to provide the discount price in areas where its network speeds were slower than 3Mbps. After being criticized, AT&T changed its mind.

Despite AT&T's use of fiber in dozens of metro areas, many rural customers in the US will continue to be stuck on sub-broadband speeds for years to come. AT&T struck a deal with the US government to get nearly $428 million a year over 10 years to provide 10Mbps/1Mbps service to 1.1 million rural homes and businesses in 18 states. The money comes from the Connect America Fund, which draws from surcharges on Americans' phone bills to pay for rural Internet service.

As copper networks increasingly become outdated, the FCC is seeking to eliminate regulations to make it easier for ISPs to retire copper networks. However, the copper could be replaced by wireless networks instead of fiber in areas where fiber rollouts aren't cost-effective. AT&T is deploying a 10Mbps fixed wireless service in order to meet its Connect America Fund obligations.

AT&T said 140,000 of the Connect America Fund homes and businesses will be in California, and pointed out that its "Project AirGig" technology could eventually "deliver low-cost, multi-gigabit wireless Internet speeds."

This article was updated after publication with responses from AT&T.

JON BRODKIN Jon is Ars Technica's senior IT reporter, covering the FCC and broadband, telecommunications, wireless technology, and more.**EMAIL** jon.brodkin@arstechnica.com // **TWITTER** @JBrodkin

Column AT&T's rollout of broadband serves the rich, shunts mid- and low-income families to the slow lane

AT&T brags about its rollout of high-speed broadband, but many communities are left behind. (Mark Lennihan / Associated Press)

By **Michael Hiltzik**

APRIL 25, 2017, 1:20 PM

The argument that the private sector can do things better, faster and cheaper than government never seems to go out of style.

But a new report on AT&T's strategy for rolling out high-speed Internet service in California underscores what may be the biggest flaw in that argument: When critical infrastructure construction is left entirely to private companies, much of the public gets shortchanged.

The report, released Tuesday by UC Berkeley's Haas Institute for a Fair and Inclusive Society, shows how AT&T, the largest telecommunications carrier in the U.S. and California, favored the wealthiest communities in rolling

out its Internet service. The median income of households with access to AT&T's fastest fiber-to-the-home service was $94,208 as of last June. That was some 50% higher than the statewide median income of about $61,800 (as of 2015).

> **“**
>
> **What is really essential infrastructure for connecting people … should be rolled out in the public interest and in an equitable way.**

The median income of communities offered at best AT&T's slower U-verse fiber-to-the-neighborhood broadband service was about $67,000. And among communities with access to no better than AT&T's slow DSL service, the median income was only $53,186 — below the median income of the entire state.

Rural communities are especially disadvantaged in AT&T's rollout, the report found. These have been "largely bypassed" even by AT&T's U-verse deployment. The research underlying the report was funded by the Communications Workers of America.

Berkeley's findings have much to tell us about the drawbacks of leaving the deployment of such important services to market forces.

"What is really essential infrastructure for connecting people to education, economic opportunity, business relationships and other really critical spheres of life should be rolled out in the public interest and in an equitable and inclusive way," the report's lead author, Eli Moore of the Haas Institute, told me. "Based on the data we analyzed, it does not appear that AT&T is doing that in low-income and moderate income communities."

AT&T responded to the Berkeley study with what one might label a non-denial denial. "We don't favor any demographic when it comes to providing any service we offer," company spokesman Steven Maviglio said. "We would like nothing more than to serve every customer who wants our services."

But he also said that in deciding where to build its network, AT&T chooses to "follow the demand for high internet speeds and determine where there are solid investment cases and receptive policies," and prefers cities that have "established a strong environment for investing."

By their nature, these are likely to be more affluent communities with residents who appreciate the benefits of high-speed communications because they have experience using them. But that also leaves behind communities whose residents don't voice a demand for the best services because they don't know what they're missing—or who don't have the money to buy the Internet-connected goods and services that put additional revenues in the ISP's pocket. At its heart, this is a strategy in which the rich get richer—widening, not narrowing, the digital divide.

It's not remarkable or surprising that AT&T would focus its highest-priced and potentially most lucrative service offerings at the wealthiest neighborhoods. One can't blame a private company for responding to the profit motive any more than one can blame a dog for drinking from the toilet.

But that's what government regulation is for — to ensure that a private company endowed by government with a largely monopolistic franchise compensate the community for its windfall in part by serving all residents equally. Think of it as the equivalent of keeping the dog's nose out of the bowl.

That's especially important given the immense commercial advantages being sought by big telecommunications companies. AT&T's proposed $85-billion merger with Time Warner, the owner of CNN, HBO and other major news and entertainment sources, is currently under review by Washington regulators.

But regulators have been moving in the opposite direction. Although President Trump panned the merger while on the campaign trail, some federal agencies have taken on a distinctly pro-corporate cast since his inauguration. Trump's FCC chairman, Ajit Pai, has said that he intends to reverse the commission's 2015 "reclassification" of broadband service as a utility, rather than an "information service."

The 2015 change was aimed at increasing the FCC's oversight of ISP's like AT&T; reversal would sharply limit the commission's jurisdiction over ISP behavior, including its ability to prevent ISPs from favoring their own content on their transmission lines over that of competitors.

The California legislature tied its own regulators' hands with a 2012 measure that rolled back the authority of the Public Utilities Commission over Internet providers. The measure, which was signed into law by Gov. Jerry Brown, was supported by AT&T, along with such other major Internet providers as Verizon, Time Warner Cable, Charter Communications and Cox Communications. (Time Warner Cable and Charter have since merged.)

The only way to force Internet providers to roll out the best services to everyone is to subject them to competition. That has been shown by the rapid response of incumbent ISPs, including AT&T, in communities where Google has shown up with its high-speed Google Fiber services — instantly, ISPs that offered nothing but slow and expensive service have discovered the capability of jacking up speeds and cutting prices. What was troubling, however, is that Google rolled out its highest-speed fiber service in a way that initially favored the most affluent neighborhoods in those communities, which include Austin, Texas; Provo, Utah; Kansas City, Mo.; and its neighboring namesake in Kansas.

Unfortunately, the Trumpian FCC also seems to take an indulgent view of what constitutes competition. Actually having two or more broadband providers operating in the same neighborhood is no longer required.

The answer to what the Berkeley report calls "AT&T's digital divide in California" is to treat broadband as infrastructure to be built by government, like roads and bridges. But there are no indications as yet that it will be part of Trump's supposed $1-trillion infrastructure plan. That plan, in any event, favors projects that can attract private investment — exactly the problem underscored by AT&T rollout strategy, which devotes the

strongest firepower to communities that best serve the profit motive. The most aggressive moves may come at the municipal level, such as San Francisco's idea for a municipal broadband network.

Companies such as AT&T want to keep control of this crucial market while serving it in their own interest, not the public interest. The harvest so far has been crummy service for too many Americans, at a price few can easily afford.

Keep up to date with Michael Hiltzik. Follow @hiltzikm on Twitter, see his Facebook page, or email michael.hiltzik@latimes.com.

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UPDATES:

5:10 p.m.: This post has been updated with extended remarks from AT&T.

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